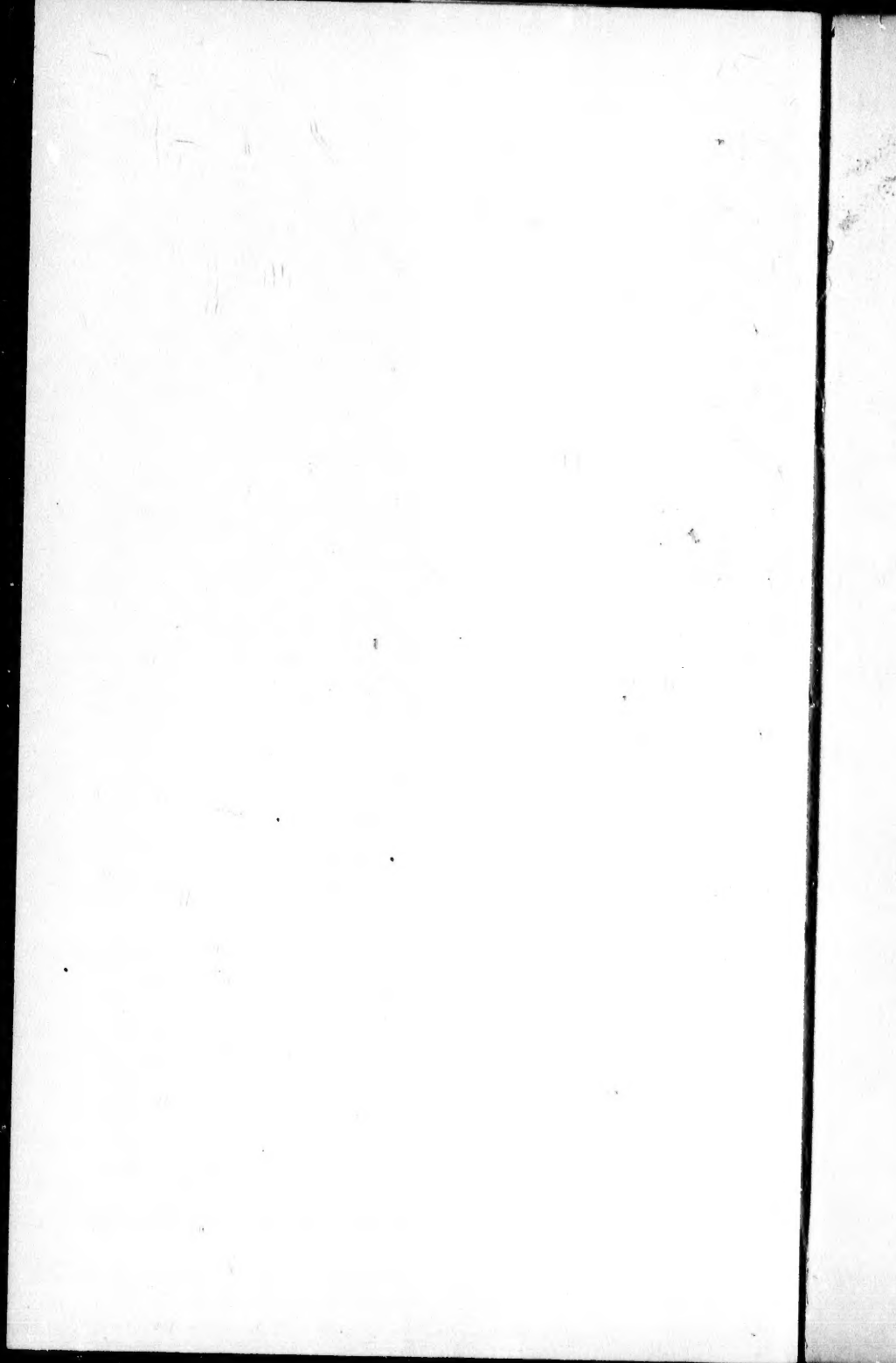




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SUCCINCT ACCOUNT
OF THE
TREATIES AND NEGOTIATIONS
BETWEEN
GREAT BRITAIN AND THE UNITED
STATES OF AMERICA,

RELATING TO THE
BOUNDARY BETWEEN THE BRITISH POSSESSIONS OF
LOWER CANADA AND NEW BRUNSWICK, IN NORTH AMERICA,
AND THE UNITED STATES OF AMERICA.

TREATY OF 1783.—ITS CONSTRUCTION.

In the second Article of the Treaty of 1783, the Boundary in question is described as follows:—

“From the north-west angle of Nova Scotia, viz.
“from that angle which is formed by a line, drawn
“due north from the source of the St. Croix River
“to the highlands; along the said highlands which
“divide those rivers that empty themselves into
“the River St. Lawrence, from those which fall
“into the Atlantic Ocean to the north westernmost
“head of Connecticut River; thence down along
“the middle of that river to the forty-fifth degree
“of north latitude; from thence by a line due west
“on said river into Lake Ontario; thence,” &c. &c.

As in a Statute so in a Treaty, the preamble may be looked at, to aid in arriving at the true interpretation of the clauses in the body of the instrument.

By the preamble to the Treaty of 1783 it is de-

clared, that the end which the high contracting parties thereto had in view, was "to establish such
 "a beneficial and satisfactory intercourse between
 "the two countries, upon the ground of reciprocal
 "advantages and mutual convenience, as may
 "(might) produce to both perpetual peace and
 "harmony."

The rules to be applied to the construction of this
 - Treaty are as much more large and liberal than
 those which obtain in the construction of compacts
 between private individuals, as the power and dig-
 nity of nations, and the interests represented by the
 sovereignty, surpass in kind and in magnitude any
 rights or possessions which can belong to individ-
 uals.

In the first instance, however, it will be proper to
 examine this international compact with the same
 strictness that would be applied to a private con-
 tract; and, as in private titles to land, so in this
 great national title deed, to ascertain upon the
 earth's surface the line described therein.

So also, as in private contracts, if the words of
 the instrument be clear and unambiguous, there is
 no room for interpretation—the words must be fol-
 lowed.

It is only in the event of discrepancies existing
 between the several clauses in the instrument, or
 between the subject of the instrument, as that sub-
 ject exists in nature, and the subject as described in
 the instrument, that we are required, or indeed at

liberty to enlarge or abridge the effect of the terms of the compact; and then the construction is to be of the large and liberal kind above mentioned.

But whether we look at the terms of the Treaty strictly or largely, it cannot be too steadily borne in mind that, as the question relates to the intention of the framers of the Treaty, we are not at liberty to introduce any facts or circumstances which could not have been in the minds of the framers of the Treaty, and consequently that all facts posterior in time to the 3rd September, 1783, to the *punctum temporis* even when the Treaty was perfected, must be excluded.

It is otherwise as to facts anterior to the making of the Treaty in any way connected with its subject-matter.

Accordingly, the controversies which from time to time may have existed in relation to the Boundaries of the tract of country in question between the Crown of France and that of England—the acts of the public authorities within the old British Colonies—within the old Province of La Nouvelle France—as well as those of the public authorities in this kingdom and in France charged with the superintendence and government of their respective colonies—the claims and pretensions of the parties to this Treaty, as found in the correspondence of its framers, with each other, or with their several Governments;—may legitimately be used to aid in the discovery of the intention. It

will not, however, be necessary here to advert to any of this class of facts, except to a very few, which are known to all the world.

Before the Treaty of 1783, three several lines of Boundaries of this territory had been in controversy:—1st. The line of the River Kennebec from its source to its embouchure in the Atlantic Ocean. 2nd. The Pentagoet or Penobscot River, also from its source to its embouchure, in the Bay of the same name, in the Atlantic Ocean. 3rd. The St. Croix or Schoodic River, also from its source to its embouchure, in Passamaquoddy Bay, at the termination of the Bay of Fundy, being the westernmost extremity of the Gulf of St. Lawrence.

The River St. John, emptying into the Bay of Fundy, had been thought of as a Boundary, but the claim to it, as a line of Boundary, had been, by the American Negotiators of the Treaty of 1783, abandoned as plainly untenable.

Now the three rivers, the Kennebec, the Penobscot, and the St. Croix, or Schoodic Rivers, all rise in one range of highlands, the distinctive character whereof, as they strike the eye, is that they divide the rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean.

Looked at as lines of Boundary between two States, they possess, nearly, the same general character.

There are, however, considerations which seem to

entitle the St. Croix, or Schoodic River, to a preference over the other two rivers as such line of Boundary.

The River and Gulf of St. Lawrence remaining to England, it was fitting that the rivers emptying into the River St. Lawrence, and into the Gulf, and the territories which they watered, should in like manner belong to England.

It was equally true that the Rivers Kennebec and Penobscot, falling into the Atlantic Ocean, should belong to the State to which the North American Atlantic Coast belonged.

Now the River St. Croix takes its source at the extremity of the highlands, that divide the waters emptying themselves into the River St. Lawrence, from those which empty themselves into the Atlantic Ocean, and its embouchure may be considered as terminating the Gulf of St. Lawrence on the one side, and as touching the Atlantic Ocean on the other.

A line run due north from the source of the St. Croix, would strike highlands, at the distance of about twenty miles from the point of departure, and proceeding along those highlands to the north-westernmost head of Connecticut River, will have a continuous course of highlands—the *ligne des versants*, which “divides the rivers emptying themselves into the St. Lawrence, from those which fall into the Atlantic Ocean.”

We have here too the north-west angle of Nova

Scotia, to wit, in the very words of the Treaty, "that angle which is formed by a line drawn due "north from the source of St. Croix River to the highlands," &c. &c. &c.

Any ordinary map giving the sources and courses of the streams in this tract of country, which empty themselves into the River St. Lawrence, and of those which fall into the Atlantic Ocean, gives this summit level, this great dividing ridge, so plainly described in the Treaty of 1783.

The map Number 1, at the end of this paper, which has been coloured to make of it an hydrographic map of the whole of this territory, shows plainly this dividing ridge.

After all the discussions which have taken place since the making of the Treaty of 1783, it is believed that it would not be possible to describe this line of Boundary with greater certainty and precision than it is described in that Treaty; the words are too plain to call for or admit of interpretation. And if interpretation were necessary, these highlands correspond not less with the spirit than they do with the letter of the Treaty.

The subject has thus far been presented in its most simple form, and free from all details; justice, however, would not be done to it without entering into details, sufficiently dry, but absolutely necessary for the explanation of the Treaty of 1783.

A notion has been adopted by many, otherwise well-informed persons, that in the discussions be-

tween Great Britain and the United States, respecting this boundary, the positions to be maintained by Great Britain, are the same as those which France heretofore maintained without success. Now although it be true that this controversy between Great Britain and the United States of America cannot be rightly understood without a knowledge of the history of the controversies which preceded it, between the English and French Crowns, still it differs essentially from the anterior controversies.

It has also been very generally supposed that the Geography of this territory was altogether unknown to the framers of the Treaty of 1783. This last opinion is as erroneous as the preceding one; the truth or error of these opinions can only be shown by reference to historical facts, to which we proceed.

Besides, conflicting titles are produced, and adverse possession set up on the one side and on the other. In investigating these opposite lines of title, we cannot be certain of understanding the last title without first understanding that which immediately precedes it, and so back until we reach the first link of the chain, and with this we ought to begin. The chronological order, always an useful aid to the memory, cannot here be inverted without prejudice to the judgment, nor can a single link of the chain be with safety omitted.

The French settlements upon the North American continent long preceded those of England.

In 1506, Jean Denys of Honfleur,* published a chart of the coast of Newfoundland, and in 1508 a savage was conveyed by a pilot of Dieppe to France. But the first of all the voyages made to North America with the view of effecting settlements there, was unquestionably that of the Baron de Lery de St. Just, in 1518.† He landed cattle upon Sable Island in this voyage, whilst it was more than a hundred years afterwards (A. D. 1624) that cattle were first conveyed to New England.‡

It is not necessary here to advert to the voyages of Jean Verrazan to the southern parts of North America, in the years 1523, 1524, and 1525, nor to those in the same direction of Laudoniere Ribaud, and of the Chevalier de Gourgues. Nor is it necessary for us to take any notice of the voyage of Jacques Cartier, in 1534, and of his settlement upon the north shore in 1535; nor of the first appointment of a Lieutenant-General in the Counties of "*Canada Hochelaga and Saguenay, and others* in 1540." Our attention will be confined to the River and Gulf of St. Lawrence, and to the great peninsula commencing on the southern shore of the St. Lawrence opposite Quebec, and terminating at the mouth of the River St. Croix, in the Bay of Fundy.

After the failure of an attempt to make a settlement at Tadoussac, by the Sieur Chauvin, a French

* *Fastes Chronologiques du Nouveau Monde*, p. 13.

† *L'Escarbot*, p. 21.

‡ *Salmon*, III., 536.

Protestant, and after his death, about the year 1602, the Sieur de Monts, who had made his first voyage with Chauvin, formed the project of effecting a settlement more to the southward.* The Sieur de Poitrincourt joined in this enterprise. L'Escarbot, whom the Sieur de Poitrincourt took with him to America, on his second voyage, in 1606, has given the history of these early settlements, whereof he was, as it were, an eye-witness, since Port Royal (Annapolis) was only founded in 1605, and that he was mainly accessory to the earliest advances of that colony.

The Letters Patent nominating the Sieur de Monts *Lieutenant Général pour représenter notre personne au Pays, Territoire, Côtes et Confins de l'Acadie, à commencer des le quarante—quatrième degré jusqu' au quarante—sixième*, bear date the 8th of November, 1603, and may be read in L'Escarbot, p. 417.

As early as 1604, the Sieur de Monts fitted out two ships, one intended to form a settlement within the limits of his grant, in which he embarked with the Sieurs Champlain and de Poitrincourt; the other under the command of the Sieur de Pont Gravé, intended principally for the fur trade.†

Upon the 6th May, 1604, they reached the coast of

* Mémoires des Commissionnaires du Roi, et de ceux de Sa Majesté Britannique sur les possessions et les droits respectifs des deux Couronnes en Amérique I. 137.—Champlain, part I. p. 42.

† Mem. des Comm. I. 137.

Acadie, at Port Rossignol, and thence sailing coastwise, they reached a port which they called Port au Mouton. They thence went to Cape Sable, and explored a large bay, which they denominated la Baie Françoise, and which is now known by the name of the Bay of Fundy. The port at the entrance of this bay was, from its signal beauty, called Port Royal, and the Sieur de Poitrin-court was so well pleased with the situation that he solicited and obtained a grant of land there to settle with his family.* After going out of Port Royal, and exploring the mines, they crossed the bay and arrived at the River St. John on the 24th of June: leaving then that river, and sailing coastwise, they came to the mouth of a river, and settled on a small island in it which they called St. Croix, a name which was afterwards transferred to the river itself.†

The situation of St. Croix not being found advantageous, it was determined to effect a new settlement at Port Royal, and this was carried into effect in 1605.‡

Another settlement was effected about the same time towards the River Pentagoet (Penobscot) by the Sieur de la Saussaye.§

The colony not receiving much support from France, was feeble and unprosperous, but retained

* L'Escarbot, p. 440. † L'Escarbot, p. 441, et seq.

‡ L'Escarbot, 495, 496; Mem. Coms., '38.

§ Champlain, part I., p. 104, and seq.

quiet possession of the country. Against this colony, the expedition of Argal was directed.

He found it totally unprepared for defence. The inhabitants, who had assiduously and successfully cultivated the friendship of the Indians, being restrained by no fear of hostility from them, were scattered abroad in the woods, engaged in their several pursuits; and a ship and bark, just arrived from France, laden with articles necessary for the use of the colony, were surprised in port, and their cargoes taken to James' Town. Argal left no garrison to keep possession of the place, and after his departure, the French, who had only dispersed themselves among the Indians during the continuance of danger, immediately resumed their former station.

The pretext for this expedition was, that the French, by settling in Acadie, had invaded the rights of the English acquired by the first discovery of the continent.*

The voyages of discovery made by the English and French, to the coast of North America, had been nearly contemporaneous, and they set up conflicting claims to the territory. In 1603, Henry IV. of France (as has already been seen) granted to De Monts a commission as Lieutenant General

* Chalmers, Hutchinson, Marshall's Life of Washington, vol. i., pp. 54, 55.

over that part of America, which lies between the 40th and 46th degrees of north latitude, with powers to colonize and to rule it; and in 1606, King James granted to the two Virginia Companies all that territory which lies between the 34th and 45th degrees of north latitude; in consequence of which, in 1614, Captain Argal attacked and dispersed the settlements made by the French, on the Bay of Fundy. In 1620, James granted to the Plymouth Company all that territory which lies between the 40th and 48th degrees of north latitude, and in 1621, he, as King of Scotland, granted to Sir William Alexander, under the Title of Nova Scotia, with the consent of the Plymouth Company, the country bounded on the north, and east, and south, by the River St. Lawrence, and the Ocean, and on the west by the River St. Croix. Under these different grants actual settlements had been made by the French as far south and west as the St. Croix, and by the English as far north and east as the Kennebec or Connecticut River. During the war with France, which broke out in the commencement of the reign of Charles I., that monarch granted a commission to Captain Kirk, for the conquest of the countries in America, occupied by the French, and under that commission, in 1629, Canada and Acadie were subdued; but by the Treaty concluded at St. Germain, those places were restored to France, without any

description of their limits, and Port Royal, Quebec, and Cape Breton, were severally surrendered by name.*

The Treaty of St. Germain contained not a *cession* but a *restitution*, as will be seen on reference to the terms of it. The circumstances accompanying the negotiation of this Treaty, so far as Canada and Acadie are concerned, are to be found as well in Charlevoix, Vol. I., p. 173, and seq. as in the beginning of the second book of the *Historia Canadensis Creuxii*.—The Letters Patent to William Alexander, Earl of Stirling, were anterior to the Treaty of Saint Germain, his first patent by James I., being of the year 1621, and his second by Charles I., bearing date in 1625, whilst the Treaty of St. Germain is of 1633. The description of Nova Scotia as given in these Letters Patent, is in the following words:—

*“ Omnes et singulas terras continentes et insulas
 “ situatas et jacentes in America, intra Caput seu
 “ promontorium communiter Cap de Sable appellatum,
 “ jacens prope latitudinem quadraginta trium graduum
 “ aut eo circa ab equinoctiali linea versus Septentrio-
 “ nem a quo promontorio versus littus maris tendens
 “ ad Occidentem ad Stationem navium Sanctæ Mariæ
 “ vulgo St. Mary's Bay, et deinceps versus Septen-
 “ trionem per directam lineam, introitum sive ostium*

* Chalmers, Hutchinson, Marshall's Life of Washington, vol. i., pp. 103, 104.

" *magnæ illius stationis navium trajicientem quæ ex-*
 " *currit in terræ Orientalem plagam inter regiones*
 " *Suriquorum et Hecheminorum vulgo Souriquois et*
 " *Etchemins ad fluvium vulgo nomine Santæ Crucis*
 " *appellatum, et ad scaturiginem remotissimam sive*
 " *fontem ex occidentali Parte ejusdem, qui se primum*
 " *prædicto fluvio immiscet; unde per imaginariam*
 " *directam lineam quæ pergere per terram seu currere*
 " *versus septentrionem concipietur ad proximam navium*
 " *stationem fluvium vel scaturiginem in magno fluvio*
 " *de Canada sese exonerantem et ab eo pergendo versus*
 " *Orientum per maris oras littorales ejusdem fluvii de*
 " *Canada, ad fluvium, stationem navium, portum aut*
 " *littus communiter nomine de Gachepé aut Gaspé*
 " *notum et appellatum; et deinceps versus Euronotum*
 " *ad Insulas Baccalaos vel Cape Breton vocatas, re-*
 " *linquendo easdem insulas à dextra et voraginem dicti*
 " *fluvii de Canada sive magnæ stationis navium et*
 " *terras de Newfoundland cum insulis ad easdem*
 " *terras pertinentibus à sinistra et deinceps ad Caput*
 " *sive promontorium de Cap Breton prædictum jacens*
 " *prope latitudinem quadraginta quinque graduum aut*
 " *eo circa, et à dicto promontorio de Cap Breton versus*
 " *meridiem et occidentem ad prædictum Cap de Sable*
 " *ubi incepit perambulatio, includens et comprehendens*
 " *intrà prædictas maris oras littorales ac earum cir-*
 " *cumferentias à mari ad mare, omnes terras conti-*
 " *nentes cum fluminibus, torrentibus, sinibus, littoribus,*
 " *insulis, aut maribus jacentibus prope aut infra sex*
 " *leucas ad aliquam earundem partem, ex Occiden-*

*“ tali, Boreali vel Orientali partibus orarum littoralium
 “ et præinctuum earumdum, et ab Euronoto ubi jacet
 “ Cap Breton, et e. Australi parte ejusdem (ubi est
 “ Cap de Sable) omnia maria ac insulas versus meri-
 “ diem intra quadraginta leucas dictarum orarum lit-
 “ toralium earumdum, magnam insulam vulgariter ap-
 “ pellatam Isle de Sable vel Sablon includendo, jacentem
 “ versus Carban vulgo south south-east, circa triginta
 “ leucas à dicto Cap Breton in mari et existentem
 “ in latitudine quadraginta quatuor graduum aut eo
 circa.”*

In the Treaty of St. Germain, there was a formal surrender of all claim to the land described in the Earl of Stirling's Patent, and it was to have been expected, that nothing more would have been heard of that claim.

However “ Colonial historians (says Chalmers*),
 “ with an inattention or interestedness of which
 “ there are few examples, have always insisted that,
 “ notwithstanding the absolute restitution before
 “ mentioned, certain rights with regard to that
 “ territory still remained in England; and her states-
 “ men, with a credulity and want of wisdom equally
 “ unexampled, have implicitly adopted their sen-
 “ timents.† But in what consists the justice or
 “ policy of preserving latent pretensions which can-
 “ not be defended by candid discussion? The law

* Chalmers's Political Annals of the Colonies, p. 93.

† This appears to have been written before the American Revolution.

“of nations reprobates whatsoever contributes to
 “disturb their repose ; and the present generation
 “has abundant cause to deplore that system of
 “mistaken politics, which entailed on this realm
 “contentions and debts, that posterity may possibly regret in vain.”

No sooner was Acadie restored to France, in 1632, than her Sovereign granted to De Razilly the lands around the Bay and River of St. Croix. The Company of New France conveyed, in 1635, the territory on the banks of the River St. John to St. Etienne de la Tour, the General of that colony. Massachusetts, as well as the other settlements of New England, beheld with regret the progress of the French on the adjacent coast, and dreaded their ultimate success ; and Sedgewick, who was Commander-in-chief of Cromwell's forces in New England, was easily persuaded to attack a people whose religious tenets he detested, and whose country he hated. He acquired Port Royal by capitulation, in August, 1654 ; giving to the inhabitants liberty in their religion, and security for their property, and on these conditions Acadie soon after submitted to his power.*

After the conquest of the Peninsula of Nova Scotia by the arms of Cromwell, he issued his Letters Patent, granting to the Sieurs Charles de

* Chalmers's Political Annals of the Colonies, pp. 186, 187 ; Marshall's Life of Washington.

St. Etienne, Crowne, and Temple, the country and territory called Acadie by the following description (as given in the French translation of it, contained in the "*Memoires des Commissaires du Roi, et de ceux de Sa Majesté Britannique sur les possessions et les droits respectifs des deux Couronnes en Amerique*," cited above). "Le pays et territoire appelé l'Acadie et partie du pays nommé la Nouvelle Ecosse depuis Merliguesche du côté de l'ouest jusqu' au Port et Cap de la Hève rangeant les côtes de la mer jusqu' au Cap de Sable, et delà jusqu' à un certain Port appelé le *Port la Tour*, et à présent nommé le *Port L'Esmeron*, et delà rangeant les côtes et Isles jusqu' au Cap et Rivière Sainte Marie, rangeant les côtes de la mer jusqu' au Port Royal, et delà rangeant les côtes jusqu' au fond de la Baie, et delà rangeant la dite Baie jusqu' au Fort St. Jean, et de la rangeant toute la côte jusqu' à *Pentagoet et Rivière St. George* dans Mescourus, situé sur les confins de la Nouvelle Angleterre du côté de l'ouest et en dedans les terres tout le long des dites côtes jusqu' a cent lieues de profondeur, et plus avant, jusqu' à la première habitation faite par les Flamans ou François, ou par les Anglois de la Nouvelle Angleterre."

In the month of November, 1655, a Treaty was made between the two nations. France demanded the restitution of the country, which had been taken from her.—The English Government set up claims

to this country. The decision of this controversy was, by the 25th Article of the Treaty of Westminster, referred to Commissioners; but the question was only ultimately settled by the Treaty of Breda. The restitution of Acadie, and the other possessions of France in America, which had been conquered by the English, was stipulated for by that Treaty made in 1667, and carried into effect in 1670.

The Article of the Treaty of Breda relating to the restitution of Acadie, is in the following words:—
 “Le ci-devant nommé Seigneur le Roi de la Grande
 “Bretagne restituera aussi et rendra au ci-dessus
 “nommé Seigneur le Roi Très-Chrétien ou á ceux
 “qui auront charge et mandement de sa part icelle
 “en bonne forme du Grand Sceau de France, le
 “pays appelé l’Acadie, situé dans l’Amérique Sep-
 “tentrionale, dont le Roi Très-Chrétien a autrefois
 “joui, et pour exécuter cette restitution, le sus
 “nommé Roi de la Grande Bretagne incontinent
 “après la ratification de la présente alliance, four-
 “nira au sus-nommé Roi Très-Chrétien, tous les
 “Actes et Mandemens expédiés duement et en
 “bonne forme, necessaires á cet effect, ou les fera
 “fournir á ceux de ses Ministres et Officiers qui
 “seront par lui délégués.”

The Act of restitution of Acadie by the Crown of England, bears date the 17th of February, 1667-8, and will be found in the Appendix to this paper under the letter A.

Here, then, is a second *restitution*, not *cession*, of Acadie, which formed a portion of the territory comprised in the Letters Patent of James I. and Charles I., in favour of Sir William Alexander.

In 1674, the Fort of Pentagoet was attacked by an Englishman, with the crew of a Flemish ship, and taken possession of, as well as that of Fort St. John. In 1680, some men from Massachusetts seized upon the same forts, which they abandoned, and the Baron of St. Castin, who had repaired that of Pentagoet, was summoned by the Governor of New England to evacuate it.

These acts of aggression were made the subject of loud complaints on the part of the French colonists, and the British colonists, on their part, complained of similar acts of aggression within their territories by the French colonists. The war commenced anew between the two nations in 1689, and in the month of October 1690, the English took Port Royal and Chedabucto, and summoned Quebec in the month of October in the same year 1690. The peace which was re-established in 1697, restored tranquillity to America, leaving the belligerents in possession of the territories they had there before the war. This Treaty, known by the name of the Treaty of Ryswick, like the two preceding Treaties of St. Germain and Breda, contains a *restitution* to France of her North American possessions generally, and under it the great peninsula of the River and Gulf of St. Lawrence was restored to that power.

This peace, however, was but of short duration, and the war again commenced between the two nations in 1702. The Treaty of Utrecht put an end to this war in 1713. By the twelfth article of this Treaty, His Most Christian Majesty ceded and transferred to the Queen of Great Britain, *Novam Scotiam quoque sive Acadium totam limitibus suis antiquis comprehensam ut et Portus Regis urbem, nunc Annapolim regiam dictam ceteraque omnia in istis regionibus, quæ ab iisdem terris et insulis pendent, &c.*

It is not necessary at present to enter into the details of the controversies which arose between the two States upon the construction of this article of the Treaty.

The original limits of Acadie, as established by the Letters Patent to the Sieur de Monts, as Lieutenant-General of that country, and the adjoining countries, bearing date the 8th November, 1603, embrace the country between the 40th and 46th degrees of latitude. The grant of the Company of New France to Charles de St. Etienne, Sieur de la Tour, Lieutenant-General of Acadie, of the Fort of La Tour, on the River St. John, bears date the 11th February, 1638, and contains a Grant of *Le Fort et habitation de la Tour situé en la Rivière St. Jean en la Nouvelle France entre les quarante-cinq et quarante-six degrés de latitude, ensemble les terres prochainement adjacentes à icelui dans l'étendue de cinq lieues audessus, le long de la dite rivière, sur dix lieues de profondeur dans les terres, &c. &c. tenir le tout en fief mouvant et relevant de Québec, &c.*

Difficulties having previously existed between M. De St. Etienne and M. le Commandeur de Razilly, Lieutenant-General of New France, who had settled upon, or near, the Bay of Fundy, and held a grant of the River and Bay of St. Croix, of twelve leagues in breadth and twenty leagues in depth, His Most Christian Majesty Louis XIII., by a letter dated the 10th February, 1638, and addressed to M. De Razilly, determines the limits of Mr. De Razilly's Government and those of Acadie, which letter was addressed to Mr. De St. Etienne in the following words:—" Monsieur " D'Aulnay Charnisay—Voulant qu'il y ait bonne " intelligence entre vous et le Sieur de la Tour sans " que les limites des lieux où vous avez à com- " mander l'un et l'autre puissent donner sujet de " controverse entre vous ; j'ai jugé a propos de vous " faire entendre mon intention, touchant l'étendue " des dits lieux, qui est que sous l'autorité que j'ai " donné a mon cousin le Cardinal, Duc de Riche- " lieu, sur toutes les terres nouvellement décou- " vertes par le moyen de la navigation, dont il est " Surintendant, vous soyez *mon Lieutenant Général* " *en la Côte des Etchemins à prendre depuis le milieu* " *de la terre ferme de la Baie Francoise, en tirant* " *vers les Virginies, et Gouverneur de Pentagoet et* " *que la charge du Sicur mon Lieutenant Général en* " *la Côte d'Acadie soit depuis le milieu de la dite* " *Baie Francoise, jusqu' au détroit de Canseau,*" &c.*

* Mem. des Comm. et Pièces Justificatives.

The *Sieur De La Tour* was, on an accusation of keeping up communications with Foreign Protestants, arrested by order of the Court of France, and sent home ; and the *Sieur De Charnisay* succeeded in getting annexed to his Government in 1647, under the name of "l'Acadie et confins," the two territories whereof one was known by the name of *Etchemins*, and the other by that of *Acadie*. The *Sieur De Charnisay* did more, for he obtained a grant of the country which extends from *Cape Canseau* to *Cape Rozier*, at the entrance of the Gulf of the *St. Lawrence*, which had never before formed part of the Government of the *Etchemins*, nor of that of *Acadie* ; but the King of France afterwards, in the year 1654, made a grant of this latter tract to the *Sieur Denys*.*

M. De Charnisay died in 1650, and the *Sieur De St. Etienne* having exculpated himself from the charges made against him, obtained Letters Patent, not materially different from those which had been granted to *M. De Charnisay* in 1647.

It appears from the foregoing that the country designated in the aforesaid letter to *M. De Charnisay*, by the name of *Acadie*, and the country designated in the commission of 1647 to *M. De Charnisay*, and likewise in the commission to *M. De St. Etienne* in 1651, in like manner designated by the name of *Acadie* ; and the country designated

* *Mem. des Comm.*

by the same name by Cromwell, in the grant to Crowne and Temple, differed in their metes and bounds from each other, and that they all differed, in their metes and bounds, from the country described in the Letters Patent of James I. and of Charles I., in favour of Sir William Alexander, and there called Nova Scotia. This ambiguity gave rise to long discussions between the Commissioners of the two powers, which could hardly end otherwise than in a war. The English Commissioners, on the part of His Majesty, in two memorials presented to the Commissioners of His Most Christian Majesty, bearing date the 21st September, 1750, and the 11th of January, 1751, claimed the whole country lying to the eastward of a line running due north from the mouth of the Kennebec, and striking the St. Lawrence nearly opposite Quebec. On the other hand, the Governor-General of Canada encouraged the Acadians and Indians to remove from the new possessions of Great Britain to the neighbouring establishments belonging to France, and furnished both with provisions and clothes, at an enormous expense to the Government of France.* Great efforts were made and expenses incurred on both sides, to secure the alliance of the Indians. The crisis was fast approaching when it was to be

* It is probable that the inhabitants of Madawaska are descended from these emigrants, if not from older settlers.—Mem. pour M. Bigot Intend. de la Nouv. France.

determined which of the two nations was to obtain the ascendancy in the vast territory lying between the Gulf of Mexico and the Gulf of St. Lawrence.

We now come to the war which ended in the conquest of Canada in 1759, and in its cession in 1763. As early as 1749 the Marquis De La Gallissoniere, then Governor-General of New France, began to act openly. He was only relieved in the month of September in that year, and by that time all his orders had been given.

In the Spring he had sent a colony to Detroit, and had established a garrison there. He had afterwards caused other forts to be built; those of "Baie des Puans, des Scioux, de Toronto," afterwards called Fort Rouillé, and that of the River de la Presentation. He had reinforced the forts of Frontenac and Niagara. He had taken measures to transfer the Indian trade from the English fort of Choneguen (now Oswego) to the French posts and forts. He had ordered all English, who should be found trading with the savages within the limits which he prescribed, to be arrested, and several were so.

But the most important event which occurred in this year was a solemn proclamation made by the Marquis De La Galissoniere, in the name of the King of France, of the exclusive right of his sovereign to the whole of Canada. He sent a strong detachment, under the Sieur de Celeron, to deter-

mine the limits of Canada, which he fixed at the River Ohio, then called La Belle Rivière. He caused public and authentic possession to be taken of that river in the name of the King of France. He had planted on its banks posts decorated with his King's Arms. He had boundaries planted, and had attached to them medals in lead, which represented or recalled to mind that event, with inscriptions establishing and taking possession. He thus declared implicitly that the fort of Choneguen, and some other English establishments on this side of the River Ohio, were encroachments, from which the English must either withdraw or be expelled.

An idea may be formed of the astonishing efforts made within the colony at that time, from some facts stated by M. Bigot, then Intendant-General of Canada, in his defence upon an accusation of peculation, preferred against him after his return to France, on the conquest of this country in 1759.

According to him, (and he could have had no interest in augmenting the amounts), the stores sent to Louisburg and the Island of St. John, in 1750, amounted to 333,600 livres, 15 sols, and 8 deniers; and the expense for the posts at the River St. John and Chediak for the same year was 297,389 livres, 19 sols, and 4 deniers. It appears in the same memorial that there were sent to the River St. John, in 1751, 800 barrels of flour and 100 barrels of pork by the French Government.

The estimate by M. Bigot for the expenses of

the frontier posts of Acadie, for the year 1751, amounts to 826,503 livres, 9 deniers. The expense in that year at the post of the point of Beau Sejour alone, for provisions distributed, amounts to 60,000 livres. The expenses of 1752 exceeded those of 1751.

In 1753 the Marquis Du Quesne attempted to take anew possession of the River Ohio, and built several forts there. The Sieur Marin, whom he sent thither with a numerous body of men, built several forts in that country, and, among the rest, a fort to which the name of the Governor-in-Chief was given.

M. Bigot states the expenses incurred for that expedition, up to the 1st of October, 1753, at 2,658,230 livres, 9 sols, and 4 deniers. He stated, in his despatch of that month to the French minister, that he had informed the Marquis du Quesne that, from the manner in which the expedition was carried on, it would cost at least 3,000,000, to which the General had answered "que c'etoit le salut du Canada et qu'on ne pouvoit en departir." Upon the operations ending on the 1st of October, 1753, and stated by M. Bigot to have been paid, is not included the expense of a detachment of 1040 men, who were to proceed under the command of the confidential friend of M. Bigot, M. Péan, to the Belle Rivière, nor the wages of the workmen in digging the foundations of, and in building the forts, nor the expenses of the trans-

port of 18,000 or 20,000 quintals of merchandize from Presqu'île to the River aux Bœufs, a distance of eight leagues, which was effected on men's backs.

In 1753 the same efforts were continued, and a large issue of paper currency was depreciated 30 per cent. M. Bigot drew Bills of Exchange on the French Treasury, to the amount of three millions and a half.

The expenses in the years 1754 and 1755 of the French Government, in carrying on their project of aggrandizement in North America, were enormous. The Intendant's estimate for the French Posts upon the Ohio alone, in the year 1756, amounted to between two and three millions of livres. The estimate of the same officer, transmitted from Canada to France on the 29th of August, 1758, for the following year of 1759, amounted to from thirty-one to thirty-three millions of livres. It appears that twenty-four millions were actually drawn for before the taking of Quebec in September 1759.*

The foregoing circumstances are adverted to for the purpose of showing the character of the war which was terminated by the Treaty of 1763, containing a cession of all the North American possessions of France to Great Britain. It was a war of conquest on both sides, and one wherein each party felt that the question of British or French ascendancy in the North American continent would be finally and irrevocably settled. The efforts made

* Mem. pour M. Bigot., Intendt. de la Nouv. France.

by the British nation, and by the colonists of Great Britain, corresponded with the magnitude of the object at stake. The detail of these need not here be entered into, contained, as they are, in historical works in the possession of all. There is one document, however, of such great intrinsic merit and disclosing so fully and distinctly the views entertained by the leading men in the English North American Colonies of that day, respecting the controversy which was just about to be settled by the *ultima ratio regum*, that I cannot forbear to advert to it:—

It is entitled “A Memorial, stating the Nature of “the Service in North America, and proposing a “General Plan of Operations as founded thereon,” and is to be found in the Appendix to a work of Governor Pownall, entitled “The Administration of “the British Colonies.” This document is the more important when it is recollected that the map, commonly called “Mitchell’s Map,” was compiled by the direction of, and from materials furnished by, the author of this paper, and published about the same time that this paper was written:—It was, in fact, a war map.

The Treaty of 1763 left Great Britain sole and undisputed master of all the territory on this side of Mississippi. The French division lines came to be obliterated. They were, in the language of the Civilians, destroyed *per confusionem*.

It became, then, necessary to establish new

provincial lines of division of the conquered territories.

By the Proclamation of 1763, "The Government
 " of Quebec is bounded on the Labrador coast by
 " the River St. John, and from thence by a line
 " drawn from the head of that river, through the
 " Lake St. John to the south end of the Lake Nipis-
 " sim, from whence the said line, crossing the River
 " St. Lawrence and the Lake Champlain, in forty-
 " five degrees of north latitude, passes along the
 " highlands which divide the rivers that empty
 " themselves into the said River St. Lawrence from
 " those which fall into the sea; and also along the
 " north coast of the Bay des Chaleurs, and the
 " coast of the Gulf of St. Lawrence to Cape Rosier,
 " and from thence crossing the mouth of the River
 " St. Lawrence by the west end of the island of
 " Anticosti, terminates at the aforesaid River St.
 " John."

There can be no doubt, as well from the tenor of this proclamation as from other evidence, that the intention of His Majesty's Government at that time was to assimilate the new acquisitions on this continent, in religion, laws, and government, to the other dominions of Great Britain in North America.

It has so often been asserted that Great Britain was restricted by the terms of capitulation from changing the old laws of the country, that many believe such to be the case. But this is an error, as may be seen upon referring to the capitulation itself.

It was expected that the conquest of Canada would secure the tranquillity of the North American possessions of England. The very contrary of this happened, and the prediction of the Duc de Choiseul and of Burke was verified. France no longer skirting our old colonies with her well-ordered line of posts, and the warlike Indian tribes of this continent, over which she possessed unlimited control, --the internal discontents of the colonies ceasing to be compressed by a powerful external enemy, burst forth with increased violence. Great Britain had incurred an enormous expense during the war of 1759, and was desirous of being refunded some portion of it by the colonies. But the colonies themselves had also made immense sacrifices both in men and money. "When Mr. Grenville began to form his system of American Revenue, he stated in the House of Commons that the colonies were then in debt two million six hundred thousand pounds sterling money, and was of opinion they would discharge that debt in four years. In this state those untaxed people were actually subject to the payment of taxes to the amount of six hundred and fifty thousand pounds a year. In fact, however, Mr. Grenville was mistaken. The funds given for sinking the debt did not prove quite so ample as both the colonies and he expected. The calculation was too sanguine, -- "the reduction was not completed till some years after, and at different times in different colonies."*

* Burke,

The plan of taxing the colonies for a revenue to be levied under the authority of the Imperial Parliament, and to be applied to imperial purposes by it, was first attempted to be carried into effect by Mr. Grenville's act of 1767. The discontents produced by this measure, and the general fermentation in the old colonies, seem to have induced a change in the views of England relative to the new acquisitions on this continent. In the rupture which it was easy now to see must take place, the probability was, that these latter would remain faithful to Great Britain. To assimilate the new acquisitions to the old ones would facilitate their union with the old colonies. To secure to the new subjects their laws and religion was calculated at once to alienate them from the other colonies, and to attach them to Great Britain. Such seems to have been the motive of the provisions of the 14th of the King relative to the old laws and religion of the mass of the inhabitants of the then province of Quebec.

The first public document in which we can trace the operation of these new views of policy is in a Report made, in 1769, by His Excellency Brigadier-General Carleton, the Governor-in-Chief of the said Province, to His Majesty in Council, concerning the administration of the laws and the state of justice in the said province, which suggests to His Majesty the reviving of the whole of the French laws in civil matters.

The French Settlements could not be considered as extending below the Bay des Chaleurs. There was no reason then of policy or justice to extend the French laws in that direction beyond that Bay ; leaving all beyond it towards the Gulf to the Province of Nova Scotia. The boundaries of the Province of Quebec, as given in the 14th of the King, are as follows :—

“ All the territories, islands, and countries in
 “ North America, belonging to the Crown of Great
 “ Britain, bounded on the south by a line from the
 “ Bay of Chaleurs along the highlands which divide
 “ the rivers that empty themselves into the River
 “ St. Lawrence, from those which fall into the sea,
 “ to a point in forty-five degrees of northern lati-
 “ tude, on the eastern bank of the River Connecticut,
 “ keeping the said latitude directly west through
 “ the Lake Champlain, until, in the same latitude,
 “ it meets the River St. Lawrence ; from thence up
 “ the eastern bank of the said river to the Lake
 “ Ontario ; thence through the Lake Ontario and
 “ the river commonly called Niagara, and thence
 “ along by the eastern and south-eastern bank of
 “ Lake Erie, following the said bank until the same
 “ shall be intersected by the Northern Boundary,
 “ granted by the charter of the Province of Penn-
 “ sylvania, in case the same shall be so intersected,
 “ and from thence along the said Northern and
 “ Western Boundaries of the said province, until
 “ the said Western Boundary strikes the Ohio; but

" in case the said bank of the said lake shall not be
 " found to be so intersected, then, following the said
 " bank until it shall arrive at that point of the said
 " bank which shall be nearest to the north-western
 " angle of the said Province of Pennsylvania, and
 " thence, by a right line, to the said north-western
 " angle of the said province, and thence along the
 " western boundary of the said province until it
 " strikes the River Ohio, and along the bank of the
 " said river westward to the banks of the Mississippi,
 " and northward to the southern boundary of the
 " territory granted to the merchant adventurers of
 " England trading to Hudson's Bay; and also all
 " such territories, islands, and countries, which
 " have, since the tenth of February, One thousand
 " seven hundred and sixty-three, been made part
 " of the Government of Newfoundland, &c.; and
 " they are hereby, during His Majesty's pleasure,
 " annexed to, and made part and parcel of, the Pro-
 " vince of Quebec, as created and established by
 " the said Royal Proclamation of the seventh of
 " October, One thousand seven hundred and sixty-
 " three."

The Royal Commission which was about the
 same time granted to Montagu Wilmot, Esquire,
 appointing him Captain-General and Governor-in-
 Chief over the Province of Nova Scotia, thus de-
 scribes the limits of that Province, namely,—

" To the northward, our said province shall be
 " bounded by the southern boundary of our Pro-

" vince of Quebec, as far as the western extremity
 " of the Bay des Chaleurs ; to the eastward by the
 " said bay and the Gulf of St. Lawrence, &c., and
 " to the westward, although our said province hath
 " anciently extended, and doth of right extend, as
 " far as the River Pentagoet or Penobscot, it shall
 " be bounded by a line drawn from Cape Sable
 " across the entrance of the Bay of Fundy to the
 " mouth of the River St. Croix, by the said river to
 " its source, and by a line drawn due north from
 " thence to the southern boundary of our Colony
 " of Quebec."

But as well the line running from Cape Rosiers to
 the height of land, as the line running from the Bay
 des Chaleurs to the height of land, are partition-
 lines, only as between the Province of Nova Scotia
 and the Province of Quebec.

The unfortunate war of the Revolution is known
 to us all ; and I pass over to the next great epoch
 in this inquiry, which is the treaty of peace between
 Great Britain and her old Colonies, concluded at
 Paris in the year 1783.

The main end and object of that treaty was the
 recognition by Great Britain of the independence
 of her old Colonies as a separate nation, with all
 the powers and rights incident to sovereignty. The
 subordinate provisions of the treaty must then be
 looked at in relation to this its great end and object.
 To recognize the old colonists as sovereigns of their
 own possessions, was one thing ; to surrender the

new acquisitions of England to the newly erected State, would have been another. The war, so far as the Colonies were concerned, had never been a war of conquest; it was a war of principle. And if it could by any means be looked upon as a war of conquest, it had in that view entirely failed, for the American arms had been repelled from the new possessions of England. These new possessions had remained faithful to their Sovereign. A demand made to Great Britain of a surrender of a portion of her undoubted territories, and an abandonment of her faithful subjects in these Colonies, was one which, if made, would have been instantly rejected as an indignity.

The most restricted claim of Great Britain embraced the St. Croix. The French, whom they now represented, for a long time claimed to the Kennebec. The Penobscot, or Pentagoet, as it is called by the French, was also long in controversy between the two nations, and it is believed that it will be found that the French settlements upon the Penobscot are anterior to the English. This is probably the reason why we find the Penobscot in discussion, as a boundary between the two countries, both at the Treaty of 1783, and at the Treaty of Ghent. The American negociators of the treaty of 1783, themselves, felt the force of these obvious reasons. Mr. Adams, one of the negociators of that treaty, in his examination before the Commissioners, under the fifth article of the treaty of 1794, for determining

the true St. Croix, produced in evidence on this occasion by the American agent, states as follows :—“ The British Commissioners first claimed to Piscataqua River, then to Kennebec, then to Penobscot, and at length to St. Croix, as marked on Mitchell’s map. One of the American Ministers at first proposed the River St. John, as marked on Mitchell’s map ; but his colleagues observing that as the River St. Croix was the river mentioned in the charter of Massachusetts Bay, they could not justify insisting on the St. John as an ultimatum, he agreed with them to adhere to the charter of Massachusetts Bay.”

Again, in the secret journals of the old Congress, most opportunely published in Boston, in August, 1821, we find the instructions of Congress to their Commissioners for regulating the Treaty of 1783, including an original project of the article respecting boundaries, from which the following are extracts:—“ These States are bounded north by a line to be drawn from the north-west angle of Nova Scotia, along the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River.” The southern boundary is made to terminate, as in the definitive treaty, by a line drawn along the middle of St. Mary’s River to the Atlantic Ocean.”

The description continues, “ east by a line to be

"drawn along the middle of St. John's River from its source to its mouth, in the Bay of Fundy, comprehending all Islands, &c.," as in the definitive treaty describing the points where the Boundaries "respectively touch the Bay of Fundy and the Atlantic Ocean."

The object of Great Britain, as well in the Treaty of Utrecht as in the Treaty of 1783, so far as regards this territory, seems to have been to secure the fisheries upon its coasts; and this object was fully attained by taking the St. Croix as the boundary. The Marquis de la Galissonnière, than whom no man was better acquainted with the public affairs of this continent in his day, informs us, that such was the object of the Treaty of Utrecht, in the twentieth article of the Memorial of the Commissioners of His Most Christian Majesty, upon the limits of Acadie, signed by himself and Mr. de Silhouette, and bearing date the 4th October, 1751, says, "Il est aisé de reconnoître que l'objet principal des Anglois au traité d'Utrecht étoit de s'assurer de la pêche; c'est dans cet esprit que l'Angleterre se fit céder l'Isle de Terre Neuve c'est aussi dans le même esprit qu'elle se fit céder l'Acadie; et que pour donner plus de faveurs surtout aux pêches de la Nouvelle Angleterre, elle stipula la jouissance exclusive des Bancs qui sont situés vis-a-vis les côtes d'Acadie et qui sont extrêmement abondans en poisson. Ce dernier objet se trouvoit rempli par la cession de l'Acadie, telle

“ qu'elle a été désignée dans le cours de ce mémoire,
 “ à qui puisse convenir cette pêche exclusive ; ni la
 “ côte des Etchemins, ni aucune de celles du Golfe
 “ St. Laurent, n'ont des Bancs à leur sud-est, sur
 “ lesquels on puisse pêcher.”

The point of departure once settled, the next subject of discussion would be the direction of the line. The first mention which I find made of this line is again in the Marquis De La Galissoniere's Memorial ; it is in the following words :—

“ L'objection d'incertitude sur ces limites, ne
 “ peut donc tomber que sur celles de l'intérieur des
 “ terres ; et cette decision est une preuve de l'ex-
 “ actitude et la bonne foi que les Commissaires du
 “ Roi se sont proposé d'apporter au règlement des
 “ limites, puis que ce qui'ils auroient pu marquer
 “ à cet égard, auroit été arbitraires, n'y ayant jamais
 “ eu dans le fait aucunes limites établies dans cette
 “ partie, et c'est la précisément l'objet de ce qui est
 “ à régler entre les Commissaires respectifs.

“ Dans de pareils cas, la règle la plus usitée et la
 “ plus convenable, est d'étendre les limites dans l'
 “ intérieur des terres, jusqu'à la source des rivières
 “ qui se déchargent à la côte c'est-à-dire ; que
 “ chaque nation a de son côté les eaux pendantes ;
 “ c'est ainsi qu'on en a usé à la paix des Pyrénées
 “ pour fixer les limites entre la France et l'Espagne,
 “ et si les Commissaires du Roi connoissoient une
 “ règle plus équitable, ils la proposeroient aux Com-
 “ missaires de sa Majesté Britannique.”

The Article of the Treaty of 1783 which relates to this line of boundary is the second Article, and it provides as follows:—"That all disputes which might arise in future on the subject of the boundaries of the United States may be prevented: it is agreed and declared that the following are and shall be their boundaries, viz. :—From the northwest angle of Nova Scotia, viz. : that angle which is formed by a line drawn due north from the source of the St. Croix River to the highlands, along the said highlands, which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean, to the westernmost head of Connecticut River, thence down along the middle of that river to the 45th degree of north latitude; from thence by a line due west on said latitude, until it strikes the River Iroquois or Cataraquy."

The southern boundary is terminated "by a line down along the middle of St. Mary's River to the Atlantic Ocean." The boundary is continued east by a line to be drawn along the middle of the River St. Croix, from its mouth, in the Bay of Fundy, to its source; and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east

“from the points where the aforesaid boundaries
“between Nova Scotia on the one point, and East
“Florida on the other, shall respectively touch the
“Bay of Fundy and the Atlantic Ocean, excepting
“such islands as now are, or heretofore have been,
“within the limits of the said province of Nova
“Scotia.”

Difficulties having arisen between Great Britain and the United States of America, respecting the execution of the Treaty of 1783, and a Treaty of Commerce having been agreed upon between the plenipotentiaries of the two countries in 1794, a clause was inserted in the Treaty of Amity and Commerce in that year, authorizing the nomination of Commissioners to settle all those difficulties.

This constitutes the second epoch in the present enquiry, and to it we now proceed.

**TREATY OF AMITY AND COMMERCE BETWEEN GREAT
BRITAIN AND THE UNITED STATES OF AMERICA.
--PROCEEDINGS HAD IN RELATION TO THE BOUND-
ARY IN QUESTION, UNDER THE FIFTH ARTICLE OF
THAT TREATY.**

THE fifth article of the Treaty of 1794 is to the following effect :—

“Whereas, doubts have arisen, what river was
“truly intended under the name of the River St.
“Croix, mentioned in the said Treaty of Peace, and
“forming a part of the boundary therein described ;
“that question shall be referred to the final decision
“of Commissioners, to be appointed in the follow-
“ing manner, viz. :—

“One Commissioner shall be named by His Ma-
“jesty, and one by the President of the United
“States, by and with the advice and consent of the
“Senate thereof. And the said two Commissioners
“shall agree on the choice of a third : or if they
“cannot so agree, they shall each propose one per-
“son, and of the two names so proposed, one shall
“be drawn by lot in the presence of the two origi-
“nal Commissioners. And the three Commissioners
“so appointed shall be sworn impartially to exa-
“mine and decide the said question, according to

“ such evidence as shall respectively be laid before
“ them, on the part of the British Government and
“ of the United States. The said Commissioners
“ shall meet at Halifax, and shall have power to
“ adjourn to such other place as they shall think
“ fit. They shall have power to appoint a Secre-
“ tary, and to employ such Surveyors or other per-
“ sons as they shall judge necessary. The said
“ Commissioners shall, by a declaration under their
“ hands and seals, decide what river is the River St.
“ Croix intended by the Treaty. The said declara-
“ tion shall contain a description of the said river,
“ and shall particularize the latitude and longitude
“ of its mouth and of its source. Duplicates of this
“ declaration, and of the statements of their ac-
“ counts, and the journal of their proceedings, shall
“ be delivered by them to the agent of His Majesty,
“ and to the agent of the United States, who may
“ be respectively appointed and authorized to ma-
“ nage the business on behalf of the respective go-
“ vernments; and both parties agree to consider
“ such decision as final and conclusive, so as that
“ the same shall never thereafter be called into
“ question, or made the subject of dispute or differ-
“ ence between them.”

Soon after the making of this Treaty, Thomas Barclay, Esquire, on the part of His Majesty, and David Howell, Esquire, on the part of the United States, were named Commissioners to carry the above clause into effect. In 1796, Egbert Benson,

Esquire, a Judge of the Supreme Court of New York, was appointed as an umpire, by the mutual agreement of both Commissioners, to settle a question which it seems had arisen, whether the River St. Croix mentioned in the foregoing Treaties was the river now known by the name of the Maguadavic, as was contended on the part of the United States, or the river now known by the name of the River Schoodic, as was urged on our part. The umpire determined that the River Schoodic was the true St. Croix.

Uncertainty as to the highlands described in the Treaty of 1783 could only be introduced by obtaining a point of departure different from that contemplated by the framers of the Treaty. The more accurate the description in the Treaty, the greater would probably be the discrepancy between the line described in the Treaty, and a line drawn from a point of departure other than that of the Treaty. If such assumed point of departure could be carried a certain number of miles to the eastward and northward of the true source of the St. Croix, it would be below the great dividing ridge of highlands; and a line running due north from such assumed point of departure would never strike these highlands, but would probably terminate at that subordinate range of highlands which border the northern shores of the Gulf of St. Lawrence.

That the westernmost source was the true source of the St. Croix, is established, first, by the Letters

Patent heretofore mentioned ; secondly, by the fact that that stream retains the name of the principal stream, the Schoodic, whilst the Cheputnatcook has its own peculiar name, as is usual in tributary streams ; thirdly, by the award of the American umpire.

It is true that the American umpire, whose award will presently be examined more particularly, fixes the lowest point of the Schoodic Lakes as the source of the St. Croix ; but this, for the purposes of the present argument, is altogether immaterial, for a line run due north from the lowest point of the Schoodic lakes will strike the extremity of the dividing ridge, which may be followed as well from the extremity of such line, as from the extremity of a line drawn from the true source of the St. Croix.

These two lines may be seen on the map at the end of this paper, No. 3, which map is reduced from the large map signed by the English and American Ministers, and laid before the King of the Netherlands, as evidence to be used by him in the reference made to him by the two Powers on the 12th day of January, 1829.

It was probably with a view of obtaining a point of departure to the eastward of the great dividing ridge, that it was in the first instance pretended on the part of the American commission, that the Maguadavic—a river to the eastward of the Schoodic—was the St. Croix River mentioned in the Treaty of 1783 ; but this pretension was so utterly ground-

less, that the American umpire himself rejected it. It has been seen that the American umpire also determined that the westernmost waters of the Schoodic River were its main stream.

Yet strange to say, the point of departure was fixed by a wonderful compromise at the head waters of the tributary stream Cheputnaticook, to the eastward of the dividing ridge, and to the north-eastward of the true point of departure.

The only information to the public at large upon the transactions just adverted to, is to be found in a pamphlet published on the subject of this Boundary question, under the signature "Verax," the writer of which had access to the original documents of the commission, and could not have been mistaken upon a point of such vital importance.

His words in his first letter are as follows :—

"The next year after this treaty was concluded, viz., in the year 1784, a part of the ancient province of Nova Scotia, bordering on the United States, was erected into the province of New Brunswick, and settlements were made by the king's subjects at St. Andrew's, and on the River Schoodic, as being the St. Croix, and the boundary of the treaty. The Americans soon set up a claim to the River Maguadavic as the St. Croix; and the Treaty of Amity, Commerce, and Navigation, made in the year 1794, commonly called in the United States Jay's Treaty, provided for settling this question by a Board of three

" Commissioners. By the provisions of this Treaty,
 " one Commissioner was to be appointed by each
 " Government, and the two Commissioners so ap-
 " pointed were to agree in the choice of a third ;
 " or if they could not agree, each was to propose
 " one person, and of the two names so proposed
 " one was to be drawn by lot in the presence of
 " the two original Commissioners. In this instance
 " the two original Commissioners did agree in the
 " choice of a third,—a Judge of the Supreme Court
 " of the State of New York, and a man whose cha-
 " racter stood high for talent and integrity, it being
 " probably thought more advisable by the British
 " Commissioner to select, by mutual choice, an in-
 " dividual whose character was known to him,
 " although a citizen of the United States, than to
 " trust to the nomination of a third Commissioner,
 " and thus, in all probability, leave the decision of
 " the controversy entirely to chance. This was in
 " the year 1796. The discussions before three
 " Commissioners were continued until the autumn
 " of 1798, the Maguadavic being throughout most
 " strenuously insisted upon as the true River St.
 " Croix on the part of the United States. The
 " result in the first instance was at the time well
 " understood to be, *that the third Commissioner, who*
 " *was, in fact, the umpire, expressed himself satisfied*
 " *that the British claim was fully established to the*
 " *River Schoodic as the River St. Croix, truly in-*
 " *tended by that name in the Treaty of 1783, and to*

" the WESTERN BRANCH OF THAT RIVER AS THE
 " TRUNK AND MAIN RIVER, the original Commis-
 " sioner expressing himself to be of a different
 " opinion."

It would seem that after so giving his opinion the Commissioners and umpire were all *functi officio*, and that it remained only to place the boundary stone, indicating the point of departure at the head waters of the WESTERNMOST SOURCE of the Schoodic River.

This was not done.

It is certain that the boundary mark of the point of departure was fixed at the highest waters of the Cheputnaticook. It is from this fatal source that all the difficulties which for the last thirty-five years have embarrassed the settlement of this most important question have arisen. It is this, and not any ambiguity in the Treaty of 1783, which has protracted for so many years, and still keeps unsettled, a negotiation which, if the point of departure had been properly placed at the highest head waters of the westernmost source of the Schoodic, either would not have been at all necessary, or must have been settled in six months; and this is the next part of the inquiry to which I shall proceed.

But before doing so I would beg leave to state this occurrence in the words of the author of *Verax*, and also in those of the author of a pamphlet published in London in 1826, entitled " Considerations

“of the Claims and Conduct of the United States
 “respecting the North-Eastern Boundary, and of
 “the Value of the British Colonies in North
 “America. London, 1826.”

The former of those writers goes on to say, “The
 “third Commissioner, however, placed the source
 “of the river, which the treaty required to be par-
 “ticularized at the mouth of the easternmost of the
 “Schoodic Lakes, where he seems to have considered
 “it as losing the form of a river. This point is situate
 “about five or six miles above the confluence of
 “the Cheputnaticook with the main river, and on
 “a meridian several miles to the eastward of the
 “source of the Cheputnaticook. In this state of
 “things it was proposed by the American agent,
 “*by way of accommodation*, to adopt the extreme
 “northern source of the Cheputnaticook or north-
 “ern branch of the Schoodic as the source of the
 “St. Croix. The inducement to this proposal on
 “his part was said to be *to save to the state of Mas-*
 “*sachusetts* certain grants of land that had been made
 “by that state between the western and northern
 “branches of the Schoodic; and as this proposal
 “placed the source of the St. Croix on a meridian
 “considerably to the westward of the point named
 “as the source of the river by the third Commis-
 “sioner, it was acceded to on the part of His Ma-
 “jesty, and brought about what was evidently a
 “very desirable object—an unanimous decision of
 “the three Commissioners, who accordingly, by

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" their declaration, established the River Schoodic
" and the northern branch of that river to its
" source, as the River St. Croix, truly intended in
" the Treaty of 1783. The declaration of these
" Commissioners is thus spoken of by the Presi-
" dent of the United States in his speech to Con-
" gress, December 8th, 1798. This decision, it is
" understood, will preclude all contention among
" individual claimants, as it seems that the Schoo-
" dic and its northern branch bound the grants of
" lands which have been made by the respective
" adjoining Governments.

" I have been thus particular in the history of
" the decision with regard to the River St. Croix,
" which was a matter of notoriety at the time, and,
" it is reasonable to suppose, may be substantiated
" by documents in the hands of those officially con-
" nected with the transaction ; because the writers
" in the State of Maine, in a spirit by no means
" liberal or magnanimous, speak of it as one in
" which an advantage was obtained over the United
" States, and made a merit of the State of Maine
" and Massachusetts having quietly submitted to it ;
" whereas, if national controversies are to be weighed
" in the same narrow scale as the disputes of ob-
" stinate litigants in a municipal court, *the advan-*
" *tage may be fairly said to lie on the part of the*
" *United States* : for it appears to me that the course
" pursued by the Commissioners under the Treaty
" of 1794, with regard to the source of the St.

“ Croix, *is clearly erroneous*, upon the principle
 “ which established the river itself to be the true
 “ St. Croix.

“ That principle is shortly this : the River St.
 “ Croix intended in the Treaty of 1783, is a river, a
 “ due north line from the source of which forms
 “ one side of the north-west angle of Nova Scotia,
 “ and therefore was a part of the western boundary
 “ of that province. The river which was a part of
 “ the western boundary of Nova Scotia is the river
 “ intended by the name of the St. Croix in the ori-
 “ ginal erection of that province, by the grant of
 “ King James I. to Sir William Alexander, in the
 “ year 1621, and in that grant described thus :—
 “ ‘ The river commonly called by the name of St.
 “ ‘ Croix, and to the most remote spring or foun-
 “ ‘ tain from the western part of the same which
 “ ‘ first mingles itself with the aforesaid river.’ The
 “ river thus described in this grant to Sir William
 “ Alexander, is the river called St. Croix by the
 “ first French voyagers there, in the year 1604.
 “ The particular and minute description given by
 “ these voyagers of the river which they called St.
 “ Croix, and especially of a small island in the
 “ mouth of that river, on which they wintered, cor-
 “ responds exactly with the River Schor dic ; and a
 “ small island in the mouth of that river, a short
 “ distance above St. Andrew’s, called by the French
 “ Isle St. Croix, since called Bone, or Docea’s Is-
 “ land, on which island were found, in the year 1799,

" and probably exist to the present day, indubitable
 " traces of the habitations described with such mi-
 " nute particularity by the French historians of the
 " voyage of 1604 ; and the description of these
 " historians will correspond with no other river or
 " island in that neighbourhood. The River Schoo-
 " dic is therefore the river intended in the grant to
 " Sir William Alexander as a western boundary of
 " Nova Scotia ; and if so, by the description in the
 " grant, should be followed as a boundary to its
 " most western source or spring, which, according
 " to the principle, would be the true boundary of
 " the Treaty of 1783. But *as a measure of accom-*
 " *modation*, suggested by the person to whom the
 " management of this matter was entrusted by the
 " United States, and acquiesced in by all the par-
 " ties, the source of the St. Croix was fixed at a
 " point on a meridian several miles to the eastward
 " of the source designated in the original declara-
 " tion of the western boundary of Nova Scotia ;
 " and is, therefore, in so far an advantage to the
 " United States.

" Now I cannot think that this designation of
 " the source of the River St. Croix, by the Com-
 " missioners under the 5th Article of the Treaty of
 " 1794, can be defended upon the principles which
 " must demonstrably have governed their decision ;
 " and His Majesty's subjects in this quarter would
 " be well justified in complaining of it, if it had not
 " been yielded to, for the purpose of preventing a

" more unfavourable result, according to the original decision of the umpire in the selection of a point lying on a meridian line several miles further to the eastward, as the source of the river, and if its effect on the interior boundary were of material moment. But the fact is, that if the most western source of the Schoodic had been decided to be the source of the St. Croix under the Treaty, it would have carried the line, running due north from that point, only about ten miles further to the westward ; and if the River St. John is to be crossed by this due north line, according to the claim set up by the Americans in the controversy now subsisting, such line from the most western source of the Schoodic would have crossed the St. John about fourteen miles above the Great Falls ; and as to its pernicious operation as a boundary, would not vary substantially from a north line run from the monument at the source of Chepunnaticook.

" ' But,' say the American writers, ' the St. Croix intended by the Treaty of 1783 is not the St. Croix of Sir William Alexander's grant in 1621, nor the St. Croix so named by the Sieur de Monts in 1604 ; but the river marked by the name on Mitchell's map, which map was before the Commissioners who negotiated the Treaty of Peace in 1783, and the river marked on that map, as the St. Croix, is the next great river westward of the St. John, and is clearly the Maguadavic.'

" This map of Mitchell was published in the year
 " 1755, prior to the erection of the province of
 " Quebec, and the introduction of highlands, as a
 " northern boundary of these sea-board provinces,
 " in the year 1763. This map, as it regards the
 " Bay of Passamaquoddy, and the rivers issuing
 " into it, is evidently erroneous and imperfect ; so
 " much so, that I will confidently assert that not
 " one of the rivers or the islands of this bay would
 " be known with certainty, from a comparison of
 " the delineation of them on the map, with the na-
 " tural objects as they exist. But there is a cha-
 " racteristic of the river, which the compiler of this
 " map calls the St. Croix, not to be mistaken, and
 " that is, a line of boundary traced along the
 " western side of the river, and the lake at the
 " source of the river, and along the northerly side
 " of the lake to the most northern part of it ; and
 " thence in a north course to a small river, the St.
 " Barnabas, emptying into the St. Lawrence : on
 " one side of each line the country is called New
 " England, and on the other Nova Scotia. Now,
 " in the grant of 1621, to Sir William Alexander,
 " the boundary of Nova Scotia is continued from
 " the source of the St. Croix, as before quoted, by
 " an imaginary direct line, which may be conceived
 " to go over the land, or run towards the north to
 " the nearest bay, river, or spring, discharging itself
 " into the great river of Canada. There can be no
 " doubt, then, that the boundary line thus traced

" on Mitchell's map, indicates what was at that
 " time esteemed to be the boundary of Nova Scotia,
 " from the mouth of the St. Croix to the St. Law-
 " rence; and this boundary is the boundary de-
 " scribed in Sir William Alexander's grant. If,
 " then, the river called St. Croix in Sir William
 " Alexander's grant, is the river so called by the
 " French in 1604, and this river is demonstrably,
 " unless the face of nature be changed, the Schoodic,
 " the proof is perfect that the Schoodic is the
 " river intended by the name of St. Croix in Mit-
 " chell's map.

" It is worthy of remark also, that there is a
 " river marked on this map on the eastern side of
 " Passamaquoddy Bay, probably intended for the
 " Maguadavic, which it is also probable, in con-
 " sequence of the falls so near its mouth, had not
 " then been explored, and so its size and extent
 " were not then known.

" Similar considerations might be applied to
 " prove that in all the authentic maps published
 " from the time of the original erection of the Pro-
 " vince of Nova Scotia in 1621, to the peace of
 " 1783, the river called St. Croix is intended to be
 " the river originally designated as the western
 " boundary of that province, under that name."

" The author of the pamphlet entitled ' Con-
 " siderations,' &c., gives a somewhat different ac-
 " count of the matter. He says, It is said by the
 " Treaty of 1794, this difference (as to boundary)

" was referred to Commissioners. They disagreed.
 " In that case they were to nominate an umpire.
 " A most unequal compromise was suggested and
 " adopted. The British Commissioner was to have
 " the nomination, but the umpire was to be a
 " citizen of the United States. A person so chosen
 " could hardly have been expected to decide other-
 " wise than that the Schoodic was the River St.
 " Croix, and *its most eastern source* the source ;
 " though, if the ancient boundaries of Nova Scotia
 " deserved any consideration, its charter had, in
 " express and very forcible terms, appointed *the*
 " *most western fountain and spring.*"

It is proper here to point out several material errors of fact in the foregoing statement of Verax.

I pass over the extraordinary award of the American umpire, in taking the Cheputnaticook, and the lakes and sources of the Cheputnaticook, for the main stream of the Schoodic, and the lakes and sources of the Schoodic. I pass over the still more extraordinary error of the umpire in taking the lowest expanse of water in that river as its source.

The whole course of the Cheputnaticook River, from its source to its confluence, is from sixty to seventy miles. It takes its rise there in springs or marshes, and not in a lake, and runs in the form of a small river for a distance of about ten miles, at which point it spreads out into a long irregularly formed expanse of water, which, from its resem-

blance to a lake, is popularly but improperly denominated Grand Lake, of twelve or fifteen miles in length. It thence proceeds a distance of seven or eight miles with its usual river breadth, and there again expands into two or three smaller and irregular sheets of water, which might, in like manner, be improperly called lakes, the lowest of which is not, as stated by Verax, at the distance of six miles above the confluence of the Cheputnaticook, or eastern branch of the Schoodic, but is at a distance of from twenty-five to thirty miles from the point of confluence.

Another highly material error of fact to be found in this statement is, "that if the most western source of the Schoodic had been decided to be the source of the St. Croix, under the treaty, it would have carried the line running due north from that point, only about ten miles further to the westward."

Now, so far from this being the case, the interval between the meridians of longitude of these two points is twenty statute miles. The interval between the two points, in a straight line, is fifty statute miles.

The motives assigned by Verax for the procedure of the Commissioners and umpire, in thus substituting, for the true point of departure, one which, from his statement, it appears that all parties knew to be otherwise, seem to be entirely inadequate.

There is reason to believe that subsequent to the

Treaty of 1783, to wit, about the year 1787, settlements were made under the authority of the State of Massachusetts within the British lines. The circumstances attending this settlement are not sufficiently well known to enable one to judge whether it was made in good faith or not.

But, supposing the utmost good faith to have obtained with the settlers, the greatest extent to which their claim, I will not say upon the justice, but upon the magnanimity of His Majesty's Government could have been carried, would have been for a confirmation of their titles to the lands in their actual possession, upon their taking the oath of allegiance, and becoming the King's subjects; or if this last condition was not agreeable to them, then to have been allowed to sell the lands in their actual possession, and to remove from the country with their effects, having a reasonable time allowed them for effecting the sale of their lands. But it is clear that it should have been given as a boon, and should have been strictly confined to the lands in the actual possession of settlers, under grants from the State of Massachusetts.

Unanimity was in itself a thing highly desirable; but the price which seems here to have been paid for it,—the surrender of a small province, without any other equivalent, may, perhaps, be thought too high.

Verax, it is apprehended, is also in an error, in considering the erroneous location of the point of

departure in 1798 as conclusive and irremediable.

The power conferred upon the Commissioners of the two countries, under the Treaty of 1794, was a limited power—limited as to the subject of it, and limited as to the form and manner in which it was to be executed.

The matter referred to the Commissioners was to determine "what river was truly intended, under "the name of the River St. Croix, mentioned in "the said Treaty of 1783, and forming a part of "the boundary therein described."—Art. 5.

If the Commissioners named should not agree, then the Treaty provides that "the two Commissioners shall agree on the choice of a third ; or if "they cannot so agree, they shall each propose "one person, and of the two names so proposed "one shall be drawn by lot, in the presence of the "two original Commissioners."

It has been seen above, that another and very different mode of selection was adopted by the Commissioners, and the important point, that the umpire should be an American citizen, surrendered. The umpire and the Commissioners were next to be sworn "to examine and decide the said question according to such evidence as should respectively be laid before them on the part of the "British Government and the United States."

They were then, by a "declaration under their "hands and seals," to "decide what river is the "River St. Croix, intended by the Treaty;" and

"this declaration was "to contain a description of "the said river," and was to particularize the "latitude and longitude of its mouth, and of its "source."

Duplicates of this declaration, and of "the statements of their accounts, and of the journals of "their proceedings," were to be delivered by them, to "the agent of His Majesty, and to the agent of "the United States, who may be respectively appointed and authorized to manage the business "on behalf of the respective governments;" and then, and then only, both parties agreed "to consider such decision as final and conclusive, so as "that the same shall never thereafter be called "into question, or made the subject of dispute or "difference between them."

It appears from the foregoing, that the power of the Commissioners was confined to the determining of the question of what river was the River St. Croix, intended by the Treaty of 1783. That point determined, they were instructed to cause it to be surveyed: what should be considered its source, was not referred to them; and their finding, therefore, upon this question would, even if regular, have been a mere and absolute nullity.

But there were irregularities in the proceedings (as stated by Verax) which, if the Treaty had given them power to determine, this question would still have vitiated their determination.

The umpire was not named in the manner pre-

scribed by the Treaty. It does not appear that he was sworn, nor indeed could he have been; otherwise how, after acknowledging the westernmost waters of the St. Croix to be the St. Croix, could he have placed the point of departure upon the tributary stream of the Cheputnaticook? It does not appear that the declaration under the hand and seal of the Commissioners, required by the Treaty, was ever made.

But why go farther, when we have it stated by Verax, that the point of departure was settled *by compromise*? Where is there to be found any power to compound or compromise, conferred upon the Commissioners? And is not such compromise again a mere and absolute nullity?

Nor can this nullity be covered by the silence of Great Britain, unless full knowledge of the mislocation of the point of departure be brought home to His Majesty's Government.

It is exceedingly improbable that it was known to the King's Ministers; when we consider how subversive it is, in its consequences, to the great ends had in view by the framers of the Treaty of 1783, and how ruinous those consequences are to the just rights of England.]

To understand the effects which this most unfortunate error has produced, it is necessary to bear in mind that there are in the southern peninsula, washed by the waters of the St. Lawrence and the Gulf, three distinct great levels.

Any ordinary map will show the sources and the courses of the rivers in this Peninsula, and having them, we have the relative elevation of the lands, and the line of these three several levels plainly marked out.

The loss of territory incurred by this mislocation of the point of departure is very great. Some idea may be formed of its extent by considering the loss of territory incurred before we reach Mars Hill.

There was lost by it, first, the triangular piece of ground lying between the two branches of the Schoodic, having its apex at the confluence of the two branches, and for its base, the line running from the westernmost source of the Schoodic to the source of the Cheputnaticook, being a distance of fifty miles; for one of its sides, the whole length of the eastern branch of the Schoodic, above the point of confluence, being about sixty miles; and, for its remaining side, the whole westernmost branch of the Schoodic, above the point of confluence, being about forty miles, and containing an area, as those rivers run, of about 628,480 acres.

Secondly. A territory in form of a trapezium, having for one of its sides twenty miles (from the westernmost source of the Schoodic to the commencement of the height of land); for another of its sides, fifty miles (the distance in a straight line from the westernmost source of the Schoodic to the easternmost source of the Cheputnaticook), being the

base line of the before-mentioned triangle, having for its thirdside the line extending from the easternmost source of the Cheputnaticook to Mars Hill, and for its fourth side the line which connects the point of termination at Mars Hill with the point of termination of the first-mentioned line, running from the westernmost source of the St. Croix to the extremity of the height of land.

These two tracts will be found to embrace probably one million and a half acres of land ; and this, whether the hypothesis of the British or of the American Government be thought to be the true one.

The territory thus surrendered between Mars Hill and the River and Gulf of St. Lawrence is immense ; but it will be lesser or greater as the one or the other of these two hypotheses is adopted. The mischief, however, does not end here. Proceeding from a point so far to the eastward and northward, not only is the second range of highlands struck much lower down than it would otherwise have been, and thus a great extent of territory sacrificed ; but we here come to intersect the St. John at a low point, where its waters are navigable, instead of either not intersecting it at all (if the British hypothesis be the true one), or intersecting it only towards its source, as would be the case if the American hypothesis were admitted. So, too, all the waters emptying themselves into the Gulf, would, even under the American hypothesis, belong

to Great Britain, as being to the eastward of the River St. John.

It will be recollected that the American Commissioners, in 1783, declined even proposing a surrender of the navigable waters of the St. John to the future republic.

It is thus seen (contrary to what is asserted by Verax) that this change in the point of departure had a most material effect upon the interior boundary.

The effects of this error upon the claim of England were attempted to be mitigated by drawing a line from Mars Hill to the main dividing ridge, and to give colour to this pretention a line of highlands between Mars Hill and the dividing ridge was marked upon maps printed and manuscript; and it is believed that such a mountainous range will be found on the maps in the office of Her Majesty's principal Secretary for Foreign Affairs; but, in point of fact, there are no such mountains or highlands. Mars Hill is an insulated hill or mountain, fifteen hundred feet above the level of the St. John at the nearest point of it. The surrounding country is hilly, and its average height above the St. John is not more than three or four hundred feet.

The Ristook, or Aristook River, one of the tributary streams of the St. John, rises at a point due west from Mars Hill, and is three hundred and thirteen feet only above the level of the St. John at the point last mentioned.

As is common through the whole of the North

American continent, the rivers on this great dividing ridge, and running in opposite or different directions, take their sources very near each other. Thus as the head spring of the St. Lawrence and of the Mississippi have their waters occasionally mingled with each other, so, on a dividing ridge of not more than twelve feet in height, do the River Etchemin and the Famine River, a tributary stream of the St. John, take their rise in the same swamp.

It would probably be found that the only highlands which could, by any possibility, be made to connect any line run due north from the sources of the Cheputnaticook, with the great dividing ridge so often adverted to, should be the line of highlands from which the valley of the River St. John derives its waters ; but it will not fail to be observed that such a line, so far from following the dividing ridge described in the Treaty of 1783, touches this ridge at a single point only,—to wit, at the source common to the Etchemin and the Famine River.

This mislocation of the point of departure was altogether unknown in Lower Canada until soon after the publication of the before-mentioned pamphlet.

It is now many years since rumours first began to be whispered, implying that the American line intersected the route from Halifax to Quebec.

The belief that this was the case acquired such a degree of consistency, that upon the close of the

last American War by the Peace of Ghent in 1814, the settlement of this Boundary was made the subject of an Article (Fifth Article) of that Treaty; and this constitutes the third great head of this inquiry.

**TREATY OF GHENT.—PROCEEDINGS HAD UNDER THE
FIFTH ARTICLE OF THAT TREATY.**

THE Fifth Article of the Treaty of Ghent is in the following words :—

“ Whereas neither that part of the highlands
“ lying due north from the source of the River St.
“ Croix, designated in the former Treaty of Peace
“ between the Powers as the north-west angle of
“ Nova Scotia, nor the north-westernmost head of
“ the Connecticut River, have yet been ascertained ;
“ and whereas that part of the boundary line, be-
“ tween the dominions of the Powers, which ex-
“ tends from the source of the River St. Croix
“ directly north to the above-mentioned north-west
“ angle of Nova Scotia, thence along the said high-
“ lands which divide those rivers that empty them-
“ selves into the River St. Lawrence from those
“ which fall into the Atlantic Ocean to the north-
“ westernmost head of the Connecticut River,
“ thence down along the middle of that river to
“ the 45th degree of north latitude, thence by a
“ line due west in said latitude, until it strikes the
“ River Iroquois or Cataraguy, has not yet been

" surveyed, it is agreed that, for these several pur-
 " poses, two Commissioners shall be appointed,
 " sworn, and authorized to act exactly in the man-
 " ner directed with respect to those mentioned in
 " the next preceding Article, unless otherwise spe-
 " cified in the present Article. The said Commis-
 " sioners shall meet at St. Andrew's, in the pro-
 " vince of New Brunswick, and shall have power
 " to adjourn to such other place or places as they
 " shall think fit. The said Commissioners shall
 " have power to ascertain and determine the points
 " above mentioned, in conformity with the provi-
 " sions of the said Treaty of Peace of 1783, and
 " shall cause the boundary aforesaid, from the
 " source of the River St. Croix to the River Iro-
 " quois or Cataraguy, to be surveyed and marked
 " according to the said provisions ; the said Com-
 " missioners shall make a map of the said bound-
 " ary, and annex to it a declaration under their
 " hands and seals, certifying it to be the true map
 " of the said boundary, and particularizing the la-
 " titude and longitude of the north-west angle of
 " Nova Scotia, of the north-westernmost head of
 " the Connecticut River, and of such other points
 " of the said boundary as they may deem proper.

" And both parties agree to consider such map and
 " declaration as finally and conclusively fixing the
 " said boundary. And in the event of the said
 " two Commissioners differing, or both or either of
 " them refusing, declining, or wilfully omitting to

“ act, such reports, declarations, or statements, shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made, in all respects, as in the latter part of the fourth Article is contained, and in as full a manner as if the same was herein repeated.”

The Commissioners named under this Article having assumed the point of departure from the source of the Cheputnaticook to be the source of the St. Croix mentioned in the Treaty of 1783, encountered inextricable difficulties in the attempt to adapt the words of that Treaty to the country as it actually existed. The description in the Treaty of 1783 was far too accurate to admit of the substitution for the point of departure mentioned in it of another point of departure distant from the former fifty miles.

The line run due north from the head of the Cheputnaticook struck no continuous range of highlands until it approached the River St. Lawrence, and the highlands which it there struck were not a dividing ridge. The first high ground which was met in this course was Mars Hill, which has already been mentioned.

The effort made at this point on the part of the British Commissioner and Agents to get back to the main line of highlands, commencing at the head of the Connecticut River, and terminating at the source of the Schoodic or St. Croix, was liable to

considerable difficulties, Mars Hill, as has already been mentioned, being an insulated mountain. And neither at the point of intersection at Mars Hill, nor at the point of the termination of this line near the *Bay des Chaleurs*, could be found the north-west angle of Nova Scotia mentioned in the Treaty of 17 3.

The Americans then urged the prolongation of the north line to the highlands in the Gulf of St. Lawrence, and thence along this subordinate range of highlands to the head of the Connecticut River, — the boundary as thus claimed by them will be seen on the map or chart at the end of this paper, marked No. 2. That the line of boundary so claimed by the Americans does not correspond with the Treaty of 1783 is manifest, and indeed admitted on all hands. That the range of hills thus claimed by the Americans as the boundary was well known to the framers of the Treaty of 1783 is proved by the fact that that range is plainly laid down on Mitchell's Map, which was before the Commissioners at the time of making the Treaty. If the framers of the Treaty had intended to have adopted this range of mountains as a line of boundary, they could and would have described it in plain and intelligible terms.

By the admission of the American Negotiators themselves the description of this range is altogether irreconcilable with the description of the range of the Treaty. This admission of the American Ne-

gociators plainly involves the admission that the boundary claimed by them is not the true boundary.

The Commissioners under the Treaty of Ghent thus proceeding from an erroneous point of departure, were unsuccessful in their efforts to draw upon the earth's surface the line described in the Treaty of 1783, and as a last resource the matter was referred to the arbitrament of the King of the Netherlands ; and this is the next head of the present inquiry.

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REFERENCE TO THE KING OF THE NETHERLANDS.—HIS
AWARD.—REJECTION OF IT BY THE SENATE OF THE
UNITED STATES OF AMERICA.

THE Convention between His Majesty and the United States of America relative to the reference to arbitration of the disputed points under the fifth Article of the Treaty of Ghent, was signed at London on the 29th day of September, 1827, and is as follows:—

“Whereas it is provided by the fifth Article of the Treaty of Ghent, that in case the Commissioners appointed under that Article, for the settlement of the Boundary line therein described, should not be able to agree upon such Boundary line, the report or reports of those Commissioners, stating the points on which they had differed, should be submitted to some friendly Sovereign or State; and that the decision given by such Sovereign or State on such points of difference, should be considered by the contracting parties as final and conclusive. That case having now arisen, and it having there-

fore become expedient to proceed to and regulate the reference as above described, His Majesty the King of the United Kingdom of Great Britain and Ireland, and the United States of America, have for that purpose named their Plenipotentiaries, that is to say :—

“ His Majesty, on his part, has appointed the Right Honourable Charles Grant, a Member of Parliament, a Member of his said Majesty’s Most Honourable Privy Council, and President of the Committee of the Privy Council for Affairs of Trade and Foreign Plantations ; and Henry Unwin Addington, Esquire :—

“ And the President of the United States has appointed Albert Gallatin, their Envoy Extraordinary, and Minister Plenipotentiary at the Court of His Britannic Majesty :—

“ Who, after having exchanged their respective Full Powers, found to be in due and proper form, have agreed to and concluded the following Articles :

ARTICLE I.

“ It is agreed that the points of difference which have arisen in the settlement of the Boundary between the British and American Dominions, as described in the fifth Article of the Treaty of Ghent, shall be referred, as therein provided, to some friendly Sovereign or State, who shall be invited to

investigate, and make a decision upon such points of difference.

“The two contracting Powers engage to proceed in concert to the choice of such friendly Sovereign or State, as soon as the ratifications of this Convention shall have been exchanged, and to use their best endeavours to obtain a decision, if practicable, within two years after the Arbiter shall have signified his consent to act as such.

ARTICLE II.

“The reports, and documents thereunto annexed, of the Commissioners appointed to carry into execution the fifth Article of the Treaty of Ghent, being so voluminous and complicated as to render it improbable that any Sovereign or State should be willing or able to undertake the office of investigating and arbitrating upon them, it is hereby agreed to substitute for those reports new and separate statements of the respective cases, severally drawn up by each of the contracting parties, in such form and terms as each may think fit.

“The said statements, when prepared, shall be mutually communicated to each other by the contracting parties; that is to say, by Great Britain to the Minister, or Chargé d’Affaires, of the United States at London; and by the United States to His Britannic Majesty’s Minister, or Chargé d’Af-

fares, at Washington, within fifteen months after the exchange of the ratifications of the present Convention.

“ After such communication shall have taken place, each party shall have the power of drawing up a second and definitive statement, if it thinks fit so to do, in reply to the statement of the other party so communicated, which definitive statement shall also be mutually communicated, in the same manner as aforesaid, to each other, by the contracting parties, within twenty-one months after the exchange of the ratifications of the present convention.

ARTICLE III.

“ Each of the contracting parties shall, within nine months after the exchange of ratifications of this convention, communicate to the other, in the same manner as aforesaid, all the evidence intended to be brought in support of its claim, beyond that which is contained in the report of the Commissioners, or papers thereunto annexed, and other written documents laid before the commission under the fifth Article of the Treaty of Ghent.

“ Each of the contracting parties shall be bound, on the application of the other party, made within six months after the exchange of the ratifications of this convention, to give authentic copies of such in-

dividually specified Acts of a public nature, relating to the territory in question, intended to be laid as evidence before the Arbiter, as have been issued under the authority, or are in the exclusive possession, of each party.

“ No maps, surveys, or topographical evidence of any description, shall be adduced by either party beyond that which is hereinafter stipulated; nor shall any fresh evidence, of any description, be adduced or adverted to, by either party, other than that mutually communicated or applied for, as aforesaid

“ Each party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the reports of the Commissioners, or papers thereunto annexed, and other written documents laid before the commission under the fifth Article of the Treaty of Ghent, or of the other evidence mutually communicated or applied for, as above provided, which it may think fit.

ARTICLE IV.

“ The map, called Mitchell's map, by which the framers of the Treaty of 1783 are acknowledged to have regulated their joint and official proceedings, and the map A, which has been agreed on by the contracting parties, as a delineation of the water courses, and of the boundary lines in reference to

the said water courses, as contended for by each party respectively, and which has accordingly been signed by the above-named Plenipotentiaries at the same time with this convention, shall be annexed to the statements of the contracting parties, and be the only maps that shall be considered as evidence, mutually acknowledged by the contracting parties, of the topography of the country.

“ It shall, however, be lawful for either party to annex to its respective first statement, for the purposes of general illustration, any one of the maps, surveys, or topographical delineations which were filed with the Commissioners under the fifth Article of the Treaty of Ghent, any engraved map heretofore published, and also a transcript of the above-mentioned map A, or of a section thereof, in which transcript each party may lay down the highlands, or other features of the country, as it shall think fit; the water courses, and the boundary lines, as claimed by each party, remaining as laid down in the said map A.

“ But this transcript, as well as all the other maps, surveys, or topographical delineations, other than the map A, and Mitchell's map, intended to be thus annexed by either party to the respective statements, shall be communicated to the other party, in the same manner as aforesaid, within nine months after the exchange of the ratifications of this convention, and shall be subject to such objections and observations as the other contracting party may deem it

expedient to make thereto, and shall annex to his first statement, either in the margin of such transcript, map or maps, or otherwise.

ARTICLE V.

“ All the statements, papers, maps, and documents above mentioned, and which shall have been mutually communicated as aforesaid, shall, without any addition, subtraction, or alteration whatever, be jointly and simultaneously delivered in to the arbitrating Sovereign or State, within two years after the exchange of ratifications of this Convention, unless the Arbiter should not, within that time, have consented to act as such ; in which case all the said statements, papers, maps, and documents shall be laid before him within six months after the time when he shall have consented so to act. No other statements, papers, maps, or documents shall ever be laid before the Arbiter, except as hereinafter provided.

ARTICLE VI.

“ In order to facilitate the attainment of a just and sound decision on the part of the Arbiter, it is agreed that, in case the said Arbiter should desire further elucidation or evidence, in regard to any specific point contained in any of the said statements submitted to him, the requisition for such elucidation or evidence shall be simultaneously made to both

parties, who shall thereupon be permitted to bring further evidence, if required, and to make each a written reply to the specific questions submitted by the said Arbiter, but no further; and such evidence and replies shall be immediately communicated by each party to the other.

“And in case the Arbiter should find the topographical evidence laid, as aforesaid, before him, insufficient for the purposes of a sound and just decision, he shall have the power of ordering additional surveys to be made of any portions of the disputed boundary line or territory, as he may think fit; which surveys shall be made at the joint expense of the contracting parties, and be considered as conclusive by them.

ARTICLE VII.

“The decision of the Arbiter, when given, shall be taken as final and conclusive; and it shall be carried, without reserve, into immediate effect, by Commissioners appointed, for that purpose, by the contracting parties.

ARTICLE VIII.

“This convention shall be ratified, and the ratifications shall be exchanged in nine months from the date hereof, or sooner, if possible.

“In witness whereof, we, the respective Plenipo-

tentiaries, have signed the same, and have affixed thereto the Seals of our Arms.

“ Done at London, the twenty-ninth day of September, in the year of our Lord, One thousand eight hundred and twenty-seven.

“ (L.S.) CHA. GRANT,
 (L.S.) HENRY UNWIN ADDINGTON,
 (L.S.) ALBERT GALLATIN.”

On the reference made to the King of the Netherlands, justice could not be done the claim of England without bringing under his consideration the mislocation of the point of departure, and the consequences which would flow from its establishment at the true source of the St. Croix, mentioned in the Treaty of 1783. And here a question arises of deep importance, and which will present itself anew under a somewhat different form hereafter. What was the effect of the compromise under which the point of departure had been taken at the head of the Cheputnaticook, instead of at the head of the St. Croix or Schoodic? Was this assumed point of departure to be taken as the true point of departure to all intents and for all purposes? And was Great Britain estopped from referring to the true point of departure.

To answer these questions fully it would be necessary to have access to the Correspondence and public Acts of the two Governments, in relation to this assumption of a point of departure different

from that in the Treaty of 1783; there is, however, enough in the naked fact, that this point was settled by a compromise, to enable us to reach the conclusion, that Great Britain was not barred from setting up her title to the highlands described in the Treaty of 1783 by the compromise.

The compromise may have operated a surrender of the territory lying between the Schoodic and Cheputnaticook Rivers; but the highlands mentioned in the Treaty of 1783, as an object in nature, remained the same after as before the compromise. The intention of the framers of the Treaty of 1783 was to be sought for and determined without reference to the compromise; and the true line, in this view of the subject, would be the shortest line from the monument at the head of the Cheputnaticook to the highlands described in the Treaty of 1783.

It does not appear that this part of the subject was brought under the consideration of the King of the Netherlands. I am led to believe, from a perusal of the award of the King of the Netherlands, that if this part of the subject had received proper explanation, that award would have been in favour of Great Britain. The award is as follows:—

“WE, WILLIAM, by the Grace of God King of the Netherlands, Prince of Orange-Nassau, Grand Duke of Luxembourg, &c. &c. &c.

“Having accepted the functions of Arbitrator,

which were conferred upon us by the notes addressed to our Minister for Foreign Affairs by the Ambassador Extraordinary and Plenipotentiary of Great Britain, and by the Chargé d'Affaires of the United States of America, on the 12th of January, 1829, according to the fifth Article of the Treaty of Ghent, of the 24th December, 1814, and the first Article of the Convention concluded between those Powers at London on the 29th of September, 1827, in the difference which has arisen between them on the subject of the Boundaries of their respective possessions:

“Animated by a sincere desire to make, by a scrupulous and impartial decision, a suitable return for the confidence which they have shown us, and thus to afford them a new pledge of the high value which we set upon it:

“Having for this purpose duly examined and maturely weighed the contents of the first statement as well as of the definitive statement of the said difference, which the Ambassador Extraordinary and Plenipotentiary of his Britannic Majesty and the Envoy Extraordinary and Minister Plenipotentiary of the United States of America respectively delivered to us on the 1st of April of the year 1830, together with all the documents thereunto annexed in support of the same:

“Desiring now to fulfil the obligations which we have contracted, by the acceptance of the functions of arbitrator in the above-mentioned difference, by

communicating to the two high parties concerned the result of our examination, and our opinion upon the three points into which, by their common agreement, the question in dispute is divided :

“ Considering that the three points above referred to are to be determined according to the two Treaties, Acts, and Conventions, concluded between the two Powers, that is to say, the Treaty of Peace of 1783, the Treaty of Amity, Commerce, and Navigation, of 1794, the Declaration relative to the River St. Croix of 1798, the Treaty of Peace signed at Ghent in 1814, the Convention of the 29th of September, 1827, and Mitchell’s map, and the map (A.) referred to in that Convention :

“ We declare,—

“ That with regard to the first point, that is to say, Which is the spot designated in the Treaties as the north-west angle of Nova Scotia, and which are the highlands dividing the rivers that empty themselves into the river St. Lawrence from those falling into the Atlantic Ocean, along which highlands is to be drawn the line of Boundary from that angle to the north-west head of the Connecticut River :

“ Considering,—

“ That the high parties concerned respectively claim this line of Boundary, the one to the south and the other to the north of the River St. John, and have each marked upon the map (A.) the line which they demand :

"Considering,—

"That according to the instances which are adduced, the term highlands is applied not only to a hilly or elevated country, but likewise to a tract of land which, without being hilly, divides waters flowing in different directions, and that thus the more or less hilly and elevated character of the country, across which are drawn the two lines respectively claimed to the north and to the south of the River St. John, could not form the ground of a choice between them:

"That the text of the second Article of the Treaty of Peace of 1763 repeats in part the expressions which were previously employed in the Proclamation of 1763, and in the Quebec Act of 1774, to denote the southern limits of the Government of Quebec, commencing from Lake Champlain, 'in 'forty-five degrees of north latitude along the high-lands which divide the rivers that empty themselves into the River St. Lawrence from those 'which fall into the sea, and also along the north 'coast of the Bay des Chaleurs.'

"That in 1763, 1765, 1773, and 1782, it was laid down that Nova Scotia should be bounded to the north, as far as the western extremity of the Bay of Chaleurs, by the southern Boundary of the Province of Quebec; that this definition of Boundary is found again for the Province of Quebec in the commission of the Governor-General of Quebec of 1786, in which the terms of the Proclamation of 1763, and of the Quebec Act of 1774, are employed; and for

the Province of New Brunswick, in the commissions of the Governors of that Province of 1786, and of a later period, as also in a great number of maps antecedent and subsequent to the Treaty of 1783, and that the first Article of the said Treaty recites by name the States, of which the independence is recognized :

“ But that this mention thereof does not imply that the Boundaries between the two Powers, which were settled by the succeeding Article, entirely coincide with the ancient definition of Boundary of the English Provinces, the maintenance of which is not mentioned in the Treaty of 1783, and which, by its continual variations, and by the uncertainty which continued to exist with respect to it, gave rise from time to time to differences between the Provincial authorities :

“ That the line drawn by the Treaty of 1783, across the Great Lakes to the west of the River St. Lawrence, produces a deviation from the ancient Provincial charters in regard to Boundaries :

“ That it would be vain to attempt to explain why, if it were intended to maintain the ancient Provincial Boundary, Mitchell’s map, which was published in 1755, and which was therefore antecedent to the Proclamation of 1763, and to the Quebec Act of 1774, should exactly have been chosen for use in the negotiation of 1783 :

“ That Great Britain, in the first instance, proposed the River Piscataqua for the eastern Boundary of the United States, and subsequently did not

accept the proposition for the postponement of the fixing of the Boundary of Maine, or of Massachusetts Bay, to a later period :

“That the Treaty of Ghent stipulated a new survey on the spot, which could not apply to a Boundary recorded in history, or defined by internal administration ; and that, consequently, neither does the ancient definition of Boundary of the English Provinces offer a ground of decision :

“That the longitude of the north-west angle of Nova Scotia, which is to coincide with that of the source of the River St. Croix, was only settled by the Declaration of 1798, which designated which was that river :

“That the Treaty of Amity, Commerce, and Navigation, of 1794, mentions the doubt which had arisen with regard to the River St. Croix ; and that the first instructions of the Congress, at the time of the negotiations which produced the Treaty of 1783, place the said angle at the source of the River St. John :

“That the latitude of this angle, according to Mitchell’s map, which is allowed to have directed the joint and official labours of the negociators of the Treaty of 1783, is to be found on the banks of the St. Lawrence ; whereas, according to the Boundary of the Government of Quebec, it ought to be sought for at the highlands, dividing the rivers which empty themselves into the River St. Lawrence from those falling into the sea :

"That the nature of the tract of country to the east of the angle referred to, not having been described in the Treaty of 1783, no argument can thence be drawn for laying it down in one place rather than in another :

"That, besides, if it were thought necessary to bring it nearer to the source of the River St. Croix, and to look for it, for instance, at Mars Hill, it would be by so much the more possible that the Boundary of New Brunswick, drawn from thence to the north-east, would give to that Province several north-west angles, situate more to the north and to the east, according to their greater distance from Mars Hill, since the number of degrees of the angle mentioned in the Treaty has been passed over in silence :

"That, consequently, the north-west angle of Nova Scotia, which is here in question, having been unknown in 1783, and the Treaty of Ghent having declared it to be still unascertained, the mention of this angle in the Treaty of 1783, as a known point, is to be considered as an assumption of a fact which does not afford any ground for decision ; whilst, if it be considered as a topographical point, with reference to the definition, viz. 'that angle which is 'formed by a line drawn due north from the source 'of the St. Croix River to the highlands,' it merely forms the extreme point of the line 'along the said 'highlands, which divide those rivers which empty 'themselves into the River St. Lawrence from those

'which fall into the Atlantic,' an extreme point, which the mention of the north-west angle of Nova Scotia does not contribute to establish, since that angle being itself to be found, cannot lead to the discovery of the line which it terminates:

"Finally, that the arguments drawn from the exercise of the rights of Sovereignty over the Fief of Madawaska, and over the Madawaska Settlement, even admitting that exercise to be sufficiently proved, cannot decide the question, because those two establishments comprise only a portion of the territory in dispute; because the High Parties concerned have recognized the country situate between the lines respectively claimed by them as constituting an object of controversy; and because in this view possession cannot be considered as detracting from right; and because, if the ancient Boundary line of the Provinces adduced in favour of the line claimed to the north of the River St. John, and especially that mentioned in the Proclamation of 1763, and in the Quebec Act of 1774, be set aside, there cannot be admitted, in support of the line claimed to the south of the River St. John, arguments tending to prove that such or such portion of the disputed territory belongs to Canada or to New Brunswick:

"Considering,—

"That the question, stripped of the inconclusive arguments derived from the more or less hilly character of the tract of country, from the ancient

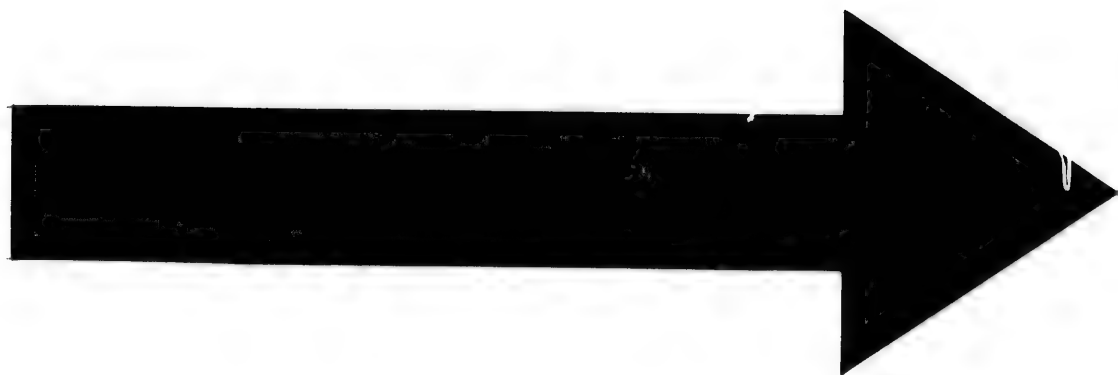
Boundary line of the Provinces, from the north-west angle of Nova Scotia, and from the state of possession, is reduced at last to these questions, Which is the line drawn due north from the source of the River St. Croix, and which is the tract of country, no matter whether it be hilly and elevated or not, which, from that line to the north-west head of the Connecticut River, divides the rivers emptying themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; that the High Parties concerned are only agreed as to the circumstance that the Boundary to be found is to be settled by some such line and by some such tract of country; that they have further agreed, since the Declaration of 1798, as to the answer to be given to the first question, except with regard to the latitude at which the line drawn due north from the source of the River St. Croix is to terminate; that this latitude coincides with the extremity of the tract of country which, from that line to the north-west head of the Connecticut River, divides the rivers emptying themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, and that, consequently, it only remains to determine which is that tract of country:

“That on entering upon this operation, it is found on the one hand,—

“First, That if by the adoption of the line claimed to the north of the River St. John, Great Britain could not be deemed to obtain a tract of country of

less value than if she had accepted in 1783 the River St. John for a Boundary, regard being had to the situation of the country between the Rivers St. John and St. Croix in the vicinity of the sea, and to the possession of both banks of the River St. John in the latter part of its course; that compensation would nevertheless be destroyed by the interruption of the communication between Lower Canada and New Brunswick, especially between Quebec and Fredericton, and that the motives would in vain be sought for which could have determined the Court of London to consent to such an interruption:

“That, in the second place, if, according to the language usually employed in geography, the generic term of rivers falling into the Atlantic Ocean, could with propriety be applied to the rivers falling into the Bays of Fundy and Chaleurs, as well as to those which discharge themselves directly into the Atlantic Ocean, still it would be hazardous to class under this denomination the Rivers St. John and Ristigouche, which the line claimed to the north of the River St. John divides immediately from the rivers discharging themselves into the St. Lawrence, not in company with other rivers flowing into the Atlantic Ocean, but by themselves alone; and thus in interpreting a definition of Boundary fixed by Treaty, in which every expression ought to be taken into account, to apply to two cases which are exclusively specific, and which there is no question as to



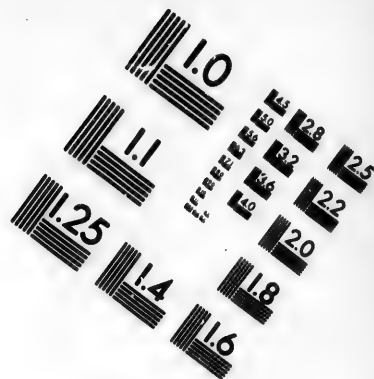
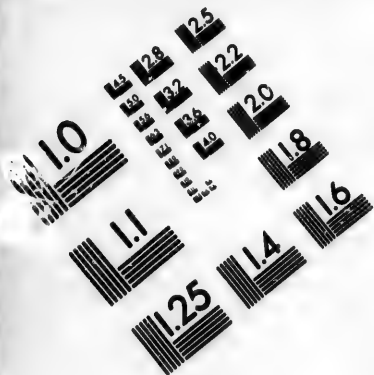
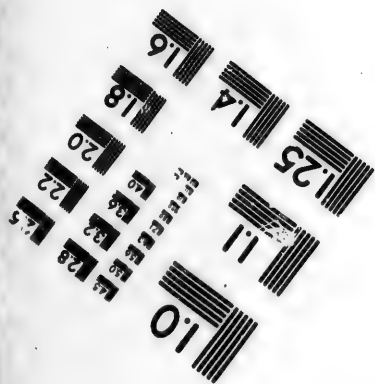
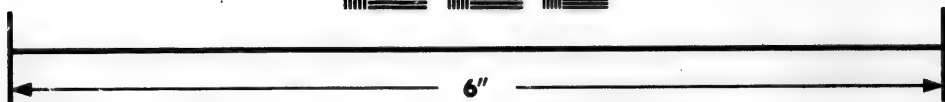
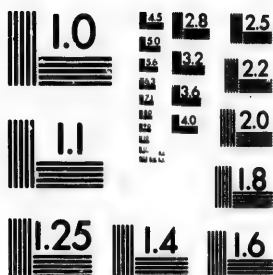


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genus, a generic expression which would give to them a wider signification, or which, if extended to the Scondiac Lakes, the Penobscott, and the Kennebec, which discharge themselves directly into the Atlantic Ocean, would establish the principle, that the Treaty of 1783 contemplated Highlands dividing mediately as well as immediately the rivers discharging themselves into the St. Lawrence, from those which fall into the Atlantic Ocean, a principle equally realized by both lines:

"Thirdly, that the line claimed to the north of the River St. John does not, except in its latter part, near the sources of the St. John, divide the rivers that empty themselves into the St. Lawrence immediately from the Rivers St. John and Ristigouche, but only from the rivers which fall into the St. John and Ristigouche; and thus, that the rivers which this line divides from those discharging themselves into the St. Lawrence, require, all of them, in order to reach the Atlantic Ocean, two intermediate aids—the one set at the River St. John and the Bay of Fundy; the other set, the River Ristigouche and the Bay of Chaleurs:

"And, on the other hand,—

"That it cannot be sufficiently explained how, if the High Contracting Parties intended in 1783 to establish the Boundary to the south of the River St. John, that river, to which the territory in dispute owes in a great degree its distinguishing character, was neutralized and put out of the question:

"That the verb 'divide' appears to require contiguity in the objects which are to be 'divided:'

"That the said Boundary forms only at its western extremity the immediate division between the River Mettjarmette and the north-west source of the Penobscott, and only divides mediately the rivers emptying themselves into the River St. Lawrence from the waters of the Kennebec, and of the Penobscott, and from the Scondiac Lakes; whilst the Boundary claimed to the north of the River St. John separates immediately the waters of the Rivers Ristigouche and St. John, and mediately, the Scondiac Lakes, and the waters of the Rivers Penobscott and Kennebec, from the rivers emptying themselves into the River St. Lawrence, that is to say, from the Rivers Beaver, Metis, Rimouski, Trois Pistoles, Green, du Loup, Kamouraska, Ouelle, Bras, St. Nicholas, du Sud, la Famine, and Chaudière:

"That even putting the Rivers Ristigouche and St. John out of the question, on the ground that they cannot be considered to fall into the Atlantic Ocean, the north line would still be found as near to the Scondiac Lakes, and to the waters of the Penobscott and of the Kennebec, as the south line would be to the Rivers Beaver, Metis, Rimouski, and others, emptying themselves into the River St. Lawrence, and would, as well as the other line, form a mediate separation between these last-named rivers, and the rivers falling into the Atlantic Ocean:

"That the circumstance of the southern Boundary

being the first that is met with in drawing a line north from the source of the River St. Croix, could afford that Boundary an incidental advantage over the other, only in case that both Boundaries should comprise in the same degree the qualities required by the Treaties :

“And that the manner in which the Connecticut and even the St. Lawrence are disposed of in the Treaty of 1783, does away with the supposition that the two Powers could have intended that the entire course of each river, from its source to its mouth, should fall to the share of either one or other of them :

“Considering,—

“That, according to what is premised, the arguments adduced on either side; and the documents offered in their support, cannot be considered sufficiently preponderant to decide the preference in favour of either of the two lines respectively claimed by the High Parties concerned, as Boundaries of their possessions, from the source of the River St. Croix to the north-west head of the Connecticut River; and that the nature of the difference, and the vague and insufficiently defined stipulations of the Treaty of 1783, do not allow the adjudication of one or the other of these lines to one of the said parties, without departing from the principles of justice and of equity towards the other :

“Considering,—

“That the question is reduced, as has been said

above, to a choice to be made of a tract of country separating the rivers discharging themselves into the River St. Lawrence from those which fall into the Atlantic Ocean; that the High Parties concerned have come to an understanding with regard to the water-courses, which are marked by common consent upon the map (A.), and which offer the only element of decision; and that, consequently, the circumstances on which this decision depends, cannot be further elucidated by means of topographical researches, nor by the production of new documents:

“ We are of opinion,—

“ That it will be proper to adopt for the Boundary of the two States a line drawn due north from the source of the River St. Croix to the point where such line intersects the middle of the bed (*thalweg*) of the River St. John; thence the middle of the bed of that river, ascending it to the point where the River St. Francis empties itself into the St. John; thence the middle of the bed of the River St. Francis, ascending it to the source of its southwesternmost branch, which source we mark on the map (A.) by the letter (X.), authenticated by the signature of our Minister for Foreign Affairs; thence a line drawn due west to the point where it joins the line claimed by the United States of America, and traced on the map (A.); thence that line to the point at which, according to that map, it falls in with that claimed by Great Britain; and thence

the line, marked on the said map by both the two Powers, to the north-westernmost head of the Connecticut River:

“ With regard to the second point, that is to say, Which is the north-westernmost head of the Connecticut River?

“ Considering,—

“ That, in order to solve this question, a choice is to be made between the river of Connecticut Lake, Perry's Stream, Indian Stream, and Hall's Stream:

“ Considering,—

“ That according to the practice adopted in geography, the source and the bed of a river are pointed out by the name of the river affixed to that source and to that bed, and by their greater relative importance compared with other waters communicating with that river:

“ Considering,—

“ That in an official letter, so early as 1772, mention is made of the name of Hall's Brook, and in an official letter of a later date, in the same year, from the same Surveyor, Hall's Brook is described as a little river falling into the Connecticut:

“ That the river in which Connecticut Lake is found appears to be more considerable than Hall's, Indian, or Perry's Stream; that Connecticut Lake, and the two lakes situate to the north of the same, appear to give to it a greater volume of water than belongs to the three other rivers; and that by admitting it to be the bed of the Connecticut, that

river is prolonged to a greater extent than if the preference were given to either of the other three rivers:

"Finally, that the map (A.) having been recognized in the Convention of 1827 as indicating the course of the waters, the authority of that map appears to extend equally to their names; seeing that in case of dispute, any name of river or lake respecting which the parties had not been agreed, might have been omitted; that the said map mentions Connecticut Lake; and that the name of Connecticut Lake implies the application of the name Connecticut to the river which passes through the said Lake:

"We are of opinion,—

"That the rivulet situate farthest to the northwest of those which flow into the most northern of the three lakes, of which the last bears the name of Connecticut Lake, is to be considered as the northwesternmost head of the Connecticut:

"And with regard to the third point, that is to say, Which is the Boundary to be traced from the River Connecticut along the parallel of the 45th degree of north latitude to the River St. Lawrence, called in the Treaties Iroquois or Cataraguy?

"Considering,—

"That the High Parties concerned differ in opinion upon the question, Whether the Treaties require a new survey of the whole Line of Boundary from the River Connecticut to the River St. Law-

rence, called in the Treaties, Iroquois or Cataraguy, or only the completion of the ancient provincial surveys:

“Considering,—

“That the fifth Article of the Treaty of Ghent of 1814 does not stipulate that such portion of the Boundaries as has not been surveyed already, shall be surveyed, but declares, that the Boundaries have not been surveyed, and determines that they shall be so:

“That in fact that survey from the Connecticut to the River St. Lawrence, called in the Treaties, Iroquois or Cataraguy, is to be considered as not having taken place between the two Powers; seeing that the ancient survey is found to be inaccurate, and that it had been ordered, not by the two Powers by common agreement, but by the ancient provincial authorities:

“That in fixing a latitude, it is usual to follow the principle of observed latitude:

“And that the Government of the United States of America has raised certain fortifications at a spot called Rouse’s Point, under the persuasion that the ground formed a portion of their territory, a persuasion sufficiently justified by the line reputed up to that time to correspond with the parallel of the 45th degree of north latitude:

“We are of opinion,—

“That it will be proper to proceed to new operations for the measurement of the observed latitude,

in order to trace the Boundary of the Connecticut River along the parallel of the 45th degree of north latitude, to the River St. Lawrence, called in the Treaties, Iroquois or Cataraguy; in such manner, however, as that in any case, at the spot called Rouse's Point, the territory of the United States of America shall extend to the fort there raised, and shall comprise that fort, and a circle round it of one kilometer radius (*son rayon kilométrique*).

"Thus done, and given under our Royal Seal, at the Hague, this tenth day of January, in the year of our Lord One Thousand Eight Hundred and Thirty-one, and the Eighteenth of our Reign.

(Signed) WILLIAM.

The Minister for Foreign Affairs,

(Signed) VERSTOLK DE SOELEN."

On receiving this award the Minister or *Chargé d' Affaires* for the United States of America, at the Court of the King of the Netherlands, in his letter to the Baron Verstolk de Soelen, bearing date the 12th day of January, 1831 (See "Correspondence relating to the Boundary between the British Possessions in North America and the United States of America, under the Treaty of 1783, subsequently to the reference to Arbitration of the disputed points of Boundary under the Convention of the 29th September, 1827; and the fifth Article of the Treaty of Ghent, with an Ap-

pendix, presented to both Houses of Parliament, by command of Her Majesty, 1838," pp. 1, 2, 3), protested against it on the ground that the Arbitrator had exceeded the power conferred upon him by abandoning altogether the Boundaries of the Treaty of 1783, and substituting for them a distinct and different line of demarcation.

As by the Constitution of the United States of America, the President has power only "by and with the advice and consent of the Senate to make Treaties, provided two-thirds of the Senators present concur (Constitution of the United States of America, Art. 2, Sect. 2), he was under the necessity of referring this matter to the Senate, and the Senate refused to sanction the acquiescence, on the part of the President of the United States of America, to the award of the King of the Netherlands on the disputed territory (Correspondence, &c., No. 15). It will be superfluous to enquire how far the Senate was justifiable in coming to this conclusion. To account for the King of the Netherlands having taken upon himself the powers of a Mediator, it may be observed that, in the continental systems of law, they have no term corresponding to the English term Arbitrator. The *Arbitre* of the French law is as strictly bound by the rules of law, even in forms of proceeding, as the public Judge is; whilst the *Arbitrateur* or *Arbitrateur et Amiable Compositeur*, as he is sometimes called, performs the functions of a Mediator, and his decision is final and conclusive

between the parties upon the subject referred to him, without reference to legal forms or legal rights. The King of the Netherlands, doubtless, considered himself as vested with the powers of an *Arbitrateur*.

But, at the same time that the Senate of the United States determined to consider the decision referred to as not obligatory on the part of the United States, and refused to advise and consent to its being carried into effect, that body passed a resolution advising the Executive to open a new negotiation with the British Government, for the purpose of determining the Boundary in question. This new negotiation forms the next head of the present enquiry.

Before proceeding to the history of this negotiation, it will be proper to examine the proceedings had by the Legislatures of Maine and Massachusetts relating to the Boundary in question, between the period of the making of the foregoing Convention of 1827, and the ultimate rejection of the award of the King of the Netherlands.

NEGOCIATION BETWEEN THE GOVERNMENT OF GREAT
BRITAIN AND THAT OF THE UNITED STATES OF
AMERICA RESPECTING THE BOUNDARY IN QUES-
TION.—PROPOSAL OF THE ESTABLISHMENT OF A
CONVENTIONAL LINE OF BOUNDARY.—NEGOCIA-
TION OF THE GOVERNMENT OF THE UNITED STATES
OF AMERICA WITH THE STATE OF MAINE.—FINAL
RESULT THEREOF.

At the same time that Mr. Livingston, the American Secretary of State for Foreign Affairs, in his letter of the 21st July, 1832 (Correspondence, &c., No. 16), informed the British Minister at Washington of the determination, on the part of the Senate, not to consider the decision of the King of the Netherlands as obligatory, and of the resolution of that body advising the President to open a new negotiation with his Britannic Majesty's Government for the ascertainment of the Boundary between the possessions of the United States and those of Great Britain, on the north-eastern frontier of the United States, according to the Treaty of Peace of 1783, he intimated to the British Minister that even if the negotiators of the two parties should be unable to

agree on the true line designated by the Treaty of 1783, means would probably be found of avoiding the constitutional difficulties that had, down to that time, attended the establishment of a boundary, more convenient to both parties than that designated by the Treaty, or that recommended by His Majesty the King of the Netherlands, and that an arrangement was then in progress, with every probability of a speedy conclusion between the United States and the State of Maine, by which the United States would be clothed with more ample powers than it had before possessed to effect that end. He intimated further, that should a negotiation be opened on this principal point, it would naturally embrace, as connected with it, the right of navigating the St. John, an object which he considered of scarcely less importance to the convenience and future harmony of the two nations than the designation of the boundary, it being the wish of the President, and as he had the best reason to believe that of His Britannic Majesty's Government, to remove all causes of misunderstanding between the two countries, by a previous settlement of all points upon which they might probably arise.

The British *Chargé d'Affaires* was in consequence instructed (Letter of Viscount Palmerston to Sir C. R. Vaughan, dated 25th February, 1833, Correspondence, &c., No. 21) to lose no time in endeavouring to ascertain from Mr. Livingston, in the first place, what was the principle of the plan of boundary,

which the American Government appeared to contemplate, as likely to be more convenient to both parties than those hitherto discussed ; and, secondly, whether any, and what arrangement such as Mr. Livingston alluded to for avoiding the constitutional difficulty, had been concluded between the General Government and the State of Maine.

In the same despatch Lord Palmerston distinctly declares, in answer to that part of Mr. Livingston's note in which he expressed for the first time the wish of the American Government to connect, with the discussion of the Boundary Question, that of the navigation of the River St. John, that it would be impossible for His Majesty to admit the principle upon which it was attempted to treat these two questions, as necessarily connected with each other : and that whatever might be the eventual decision of His Majesty upon the latter question, if treated separately, and whatever might be His Majesty's disposition to promote the harmony so happily subsisting between the two countries by any arrangements which might tend to the convenience of the citizens of the United States, without being prejudicial to the essential interests of His Majesty's subjects, His Majesty could not admit any claim of right, on the part of the citizens of Maine, to the navigation of the St. John, nor could he consider a negotiation on that point as necessarily growing out of the question of Boundary.

The American *Chargé d'Affaires*, by his note

addressed to Viscount Palmerston, and dated 3rd April, 1833, says that with regard to the enquiries made by Lord Palmerston, in conversation with him, respecting the nature of the propositions to be brought forward on the part of the United States, in relation to the Boundary itself, the character of the arrangement which might be effected with the State of Maine, and the wishes of the American Government respecting the navigation of the River St. John, he (the American *Chargé d' Affaires*) was instructed to say that these being the very points which were to be made the subject of negociation, after the parties should have agreed to open one, he could scarcely require to be developed as a preliminary on the simple question, whether the parties were willing to negotiate; and that to enter upon the consideration of those points at the present stage of the business, further than has in general terms been done in the overture made on the part of the United States, would be to anticipate the negociation itself.

The American *Chargé d' Affaires* added that he was further instructed to state to Lord Palmerston that the proposition submitted by the United States was made, and was there repeated, under the belief that an affirmative answer to it would lead to such an adjustment of this long-pending subject of difference as would prove satisfactory to both parties.

Mr. Livingston, in his letter of the 30th April, 1833, informed the British Minister at Washington

that when the note of him (Mr. Livingston) in July 1832 was written, reasonable hopes were entertained that the arrangement therein spoken of, by which the Government of the United States might be enabled to treat for a more convenient boundary, would, before that time, have taken place ;—that the anticipations then entertained had not as yet been realized, and the Government of the United States could only, in the then present state of things, treat on the basis of the establishment of the boundary presented by the Treaty ;—and lastly, that, as the suggestion in relation to the navigation of the St. John was introduced only in the view of forming a part of the system of compensations in the negotiation for a more convenient boundary, if that of the Treaty of 1783 should be abandoned, it was no further insisted on.

Sir C. R. Vaughan, in his letter to Viscount Palmerston of the 4th June, 1833, informs his lordship that constitutional difficulties, said to be insurmountable, restricted the President from treating for a boundary more satisfactory to both parties than the one suggested by the King of the Netherlands ;—that the State of Maine chose to insist upon the whole disputed territory having been vested, by the Treaty of 1783, in the United States, according to the construction put upon that Treaty by the people of that State, to whose lot the territory would fall, it being situated on their frontier ;—that Maine denied the power of Congress to dispose

of any part of it by an arrangement with Great Britain; and that thus the proposed alteration in the mode of seeking the termination of the boundary according to Treaty, was the only concession we could expect at present from the General Government.

The British Minister at Washington, in his letter to the American Minister of State for Foreign Affairs, of the 31st day of May, 1833, states his opinion that the time had arrived when this perplexed and hitherto interminable question could only be set at rest by an abandonment of the defective description of Boundary contained in the Treaty, by the two Governments mutually agreeing upon a conventional line of boundary, more convenient to both parties than those insisted upon by the Commissioners of Boundary under the fifth Article of the Treaty of Ghent, or the line suggested by the King of the Netherlands. But as a conventional line of boundary, south of the supposed true line of the Treaty, would deprive the State of Maine of territory, and the American Minister said that it could not be adopted, unless on grounds of greater public necessity than then existed, without the consent of that State, which it was not probable would be given, while there remained a reasonable prospect of discovering the line of boundary of the Treaty of 1783, and without such consent the President, after the proceedings of the Senate in 1832, was not authorized to agree to a conventional line. And the American Secretary of State for Foreign Affairs, in

a subsequent letter, expresses himself to the same effect. It cannot, he says, be too often repeated, or too forcibly impressed upon the mind of Sir Charles R. Vaughan, and upon the consideration of his Government, that any attempt to procure the consent of the State of Maine to a new conventional line, after the proceedings of the Senate, and while, in the opinion of so large a portion of that body, the ascertainment of the line called for by the Treaty of 1783 was practicable, would have been utterly hopeless.

The British Minister still urging the establishment of such conventional line, the American Secretary of State, in his letter of the 28th April, 1835, requested that as the President did not possess the power to establish a conventional boundary without the consent of the State of Maine, it would be greatly conducive to the preservation of that harmony between the two countries both are so desirous to cherish, and which is so liable to be impaired by unavailing negotiations, that whatever proposition His Majesty's Government might feel disposed to make, should, before its submission to the authorities of that state, receive a form sufficiently definite to enable the President to take their sense upon it without embarrassment, and with the least possible delay (Correspondence, &c., &c.); to which proposition it was answered, that as to any proposition which it might be the wish of the Government of the United States to receive from

His Majesty's Government respecting a conventional substitute for the line of the Treaty of 1783, the constant allusion in the correspondence which had taken place to constitutional difficulties in the way of the Executive treating for any other line than one conformable to that of the Treaty until the consent of the State of Maine was obtained, seemed to point out the necessity in the first instance of attaining that object, which must be undertaken exclusively by the General Government of the United States; and as to the other difficulties which presented themselves to the writer, they would more properly form the subject of a conference with the Secretary of State.

On the 29th of February, 1836, the American Government offered, if His Majesty's Government should consent to it, to apply to the State of Maine for its assent to make the River St. John, from its source to its mouth, the boundary between Maine and His Britannic Majesty's possessions in that part of North America.

The President, in his Message to Congress, of the 5th Dec. 1837, says, "It is not to be disguised that with full confidence often expressed in the desire of the British Government to terminate it, we are apparently as far from its adjustment as we were at the time of signing the Treaty of 1783. The sole result of long-pending negotiations, and a perplexing arbitration, appears to be a conviction on its part that a conventional line must be adopted from the impossi-

bility of ascertaining the true one according to the description contained in the Treaty (Correspondence, &c., &c., inclosure, No. 55).

The President of the United States having through the Secretary of State applied to the State of Maine for the expression of the wishes and will of that State in reference to the adjustment of this long-pending question, the Governor of Maine, on the 14th March, 1838, sent to the Senate and Representatives, the Legislature being then in Session, the following Message, &c., &c. :—

*Governor's Message to the Senate and House of
Representatives.*

"I herewith communicate for your consideration a communication addressed to me by the Secretary of State of the United States, with the correspondence therein referred to, in reference to the North-Eastern Boundary. This communication is made by request of the President of the United States, and, in compliance with his suggestion, I ask your careful and deliberate attention to the facts and propositions therein contained. The duty devolving upon me would perhaps be performed by the simple communication of these documents, without any remarks or comments of my own. But this subject, always interesting to Maine, has become more so by this direct application on the part of the President of the United States, for the expression of the wishes and will of this state in reference

to the adjustment of this long-pending question ; and feeling a deep interest personally and officially in every thing that relates to it, and anxious mainly that the rights and honour of Maine should not be jeopardized or impaired, I feel it to be a duty which I owe to the people who have assigned me my post of responsibility, to speak my honest opinions and views, plainly and unreservedly, upon the grave matters now submitted to you. I ask for my views no other weight or influence than such as their intrinsic value may entitle them to ; and I desire only to be regarded as connected with you in guarding with watchful care the great interests entrusted to us, and doing my duty in this important crisis according to my best judgment. If my views are erroneous, or if I am in your opinion unnecessarily strict and severe in my judgment of intentions, or too limited in my suggestions of policy, I trust to you to correct or overrule me. I assume no right to dictate or control your actions.

“ In the communication from Mr. Forsyth, in connexion with a very lucid and interesting history of the negotiations between the two Governments, we are informed that the discussions between the Federal Government and that of Great Britain have arrived at a stage in which the President thinks it due to the State of Maine, and necessary to the intelligent action of the General Government, to take the sense of this State in regard to the expediency of opening a direct negotiation for the establish-

ment of a *conventional line*, and if Maine should deem an attempt to adjust the matter in controversy in that form advisable, then to ask the assent of Maine to the same.

“The grave and important question therefore presented for your consideration, as you will more fully perceive by the document referred to, is whether you will clothe the Executive of the United States with the unlimited power of fixing a new and conventional line, in lieu of the treaty boundary.

“It is certainly gratifying to perceive that the right of Maine to be heard and consulted, before the treaty line is abandoned, is fully recognized by the General Government; and I have no doubt the Legislature of Maine will approach the consideration of the proposition in the same spirit in which it is offered, and with an anxious desire to terminate this long-pending and embarrassing question, if it can be done without too great a sacrifice of honour and right. Although the documents are somewhat voluminous, the proposition is single and simple in its character, and easily understood.

“I have given to the subject all the reflection and examination I have been able to bestow, since the reception of the documents; but with a most anxious desire to acquiesce in any feasible scheme of adjustment, or any reasonable proposition for a settlement, I feel constrained to say that I see little to hope and much to fear from the proposed departure from the Treaty line.

"I think that the most cursory examination of the correspondence and movements on the part of Great Britain must satisfy any one that the leading object which her diplomatists have had in view since the result of the arbitration, has been to destroy or lay aside the treaty line, to lead us away from the clear, unambiguous, definite terms of that Treaty, and involve us in interminable discussions, propositions, and replies in relation to conventional lines, no one of which will be accepted unless it gives to them a large part of our territory.

"We find that in May 1833, very soon after the President, in pursuance of the advice of the Senate, had opened a negotiation to ascertain the line *according to the Treaty of 1783*, to which treaty line the negotiation was of course confined, the British Minister suggested 'that this perplexed, and hitherto interminable question, could only be set at rest by the abandonment of the *defective* description of Boundary contained in the Treaty, and by the two Governments mutually agreeing upon a conventional line, more convenient to both parties.' The same intention is apparent in the refusal to acquiesce in the proposition to refer the settlement of the boundary line to a commission, to be constituted of an equal number chosen by each party, with an umpire to be designated by a friendly power, from the most skilful men in Europe; or secondly—that the commission should be entirely composed of scientific men of Europe, to be selected by some

friendly power, to be attended in the survey and view of the country by agents appointed by the parties. It was in answer to this proposition that the suggestion of the impracticability of the treaty line was made, and the intention became apparent to lead us away from that inconvenient obstacle to their wishes, the treaty language. The proposition was so equitable and fair,—so just to all parties, and so full of promise of adjustment upon proceedings satisfactory to us, that it could not be peremptorily rejected. But although it was entertained, the answer to it clogged the proposition with so many conditions, and so limited the powers of the Commissioners, and required the concession on our part of the all-important fact, that the St. John and Restigouche are not Atlantic Rivers,—that the original plan was at once deprived of all vitality of power or use,—and, in fact, the reference would have been merely an agreement to abide by the decision, provided both parties should be satisfied and assent to it.”

“It is certainly somewhat remarkable, that if the assumed fact is true, that the treaty line cannot be laid down or fixed according to the treaty, that so much unwillingness is exhibited to have an attempt made to ascertain it; and if Great Britain is so strongly convinced of the justice and strength of her argument and claim, that she is so reluctant to refer the whole question to disinterested and scientific Europeans.

"There is an apparent, and I doubt not a real anxiety to avoid discussion or examination based upon the treaty—and I fear that if we once abandon that line in search of a conventional one, we shall never be able to bring them back again to consider the present line, or to recognize the treaty as of any binding efficacy. I fear too, that the only question in negotiations for a conventional line will be how large a portion of our territory we must yield up. The suggestion made by our Government, to take the River St. John from its mouth to its source as the boundary, was rejected, with a simple expression of wonder that it should have been made—and our Government is told explicitly that 'His Majesty's Government cannot consent to embarrass the negotiation respecting the boundary, by mixing up with it a discussion respecting the *navigation* of the St. John, as an integral part of the question.'

"The intimation seems plain, that no negotiation for an exchange of territory or privileges will be entered into, but the single point will be, how shall the disputed territory be divided between the parties? I fear that if we abandon the treaty language—so clear and so decided in our favour, and so much at variance with their claim, we shall leave a certainty for an uncertainty, and throw doubt, confusion, and embarrassment over our claim and our course of action, and yield to Great Britain, the great obstacle we now present to her grasping spirit, the solemn Treaty of 1783. And what security have we that any

line can be fixed upon which shall be permanent, or what certainty is there that the new line may not be declared to be "impracticable" whenever it may come in contact with any of the plans or wishes of Great Britain? It would certainly be difficult to present a stronger and clearer case than we now do; if diplomacy and skill can manufacture doubts and embarrassments in the discussion of the question as now presented, we may well despair of ever fixing a certain and unalterable line of boundary. If I am accused of injustice or severity in these remarks, I would point, in justification, to the remarkable progress of the doubts and assertions in relation to the treaty line of boundary. When the question as to which river was the true St. Croix of the treaty (which was the only question *then* in dispute) was before the Commissioners, under the Treaty of 1794, the British agent founded his principal argument for the westernmost river, upon the ground that a line due north from the source of that river would only include a part of one of the rivers (the St. John) which have their mouth within New-Brunswick.

"He says, 'the most accustomed and convenient rule in cases of this kind, is to leave to each power respectively the sources of those rivers that empty themselves, or whose mouths are within its territory upon the sea coast, if it can be done consistently with, or in conformity with the intent of the treaty.

* * * * *

“A line due north from the source of the western or main branch of the Schoodiac or St. Croix, will fully secure this effect to the United States in every instance, also to Great Britain in all instances except in that of the River St. John, wherein it becomes *impossible*, by reason that the sources of this river are to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec, so that this north line must of necessity cross the St. John, but it will cross it in a part of it almost at the foot of the highlands, and where it ceases to be navigable. But if a north line is traced from the source of the Cheputnaticook, it will not only cross the River St. John, within about fifty miles of Fredericton, the metropolis of New-Brunswick, but will cut off the sources of the rivers which fall into the Bay Chaleur, if not many others, probably of Miramichi, among them which fall into the Gulf of St. Lawrence, and thereby be productive of inconvenient consequences to the two Powers, if not of contention between them, instead of terminating their differences in such a manner as may be best calculated to produce mutual satisfaction and good understanding, which is one of the principal and avowed objects of the Treaty.’

“At this time, then, there was no doubt that the line running due north to the highlands of the treaty must cross the St. John River; and if the starting point was carried east, it is admitted that such line

would cut off the Restigouche, which is nearly as far north as our claim. And certainly the line was to run equally far north whether the starting point was east or west; unless the islands inclined to the south. And yet we are now required to admit as a preliminary, that the St. John and the Restigouche are not Atlantic rivers.

“ In 1814, when the negociations which resulted in the treaty of Ghent were in progress, no pretence was made that our line did not extend beyond the St. John, and according to our present views, Great Britain by her negociators expressly stated, that she *‘ desires the revision of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing future disputes. * * * And such a variation of the line of frontier as may secure a direct communication between Quebec and Halifax.’*

“ And when our negociators peremptorily refused to agree to any *cession* of territory, the answer was, that they *‘ were not prepared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for the revision of their boundary lines, with the statement which they had subsequently made, that they had no authority to cede any part, however insignificant, of the territories of the United States, although the proposal left it open for them to demand an equivalent for such cession in territory or otherwise.’*

"And yet now that territory which they then offered to pay us for is claimed as their own; and that line which then was admitted, and recognized, as including the territory claimed by us, is now declared to be impracticable, and must be abandoned, and a more convenient one sought for and established.

"I feel most sensibly that this question now presented is one of very grave importance, and that the action now to be had by the Legislature of Maine may, and probably will, have a very material influence upon the relations between this Government and Great Britain. The painful conviction is forced upon me that Great Britain is determined to hold this territory that she now claims, deeming it highly important, as securing a connexion between her provinces in time of war and peace; and I reiterate the assertion heretofore made, that we have little to hope from the forbearance or action of the British Government. Their aim is apparent—to expunge the treaty provisions, and to hold on, with an unyielding grasp, to their modern claim, and to reject all propositions having the treaty line for their basis. I cannot but regard it as unfortunate, that our own General Government, although it has always recognized our rights to be consulted before any conventional line should be adopted, has in a degree at least given countenance to the propriety and expediency of departing from the treaty line.

"In a note from the Department of State dated

28th April, 1835, Sir Charles R. Vaughan was assured that his prompt suggestion, as His Britannic Majesty's Minister, that a negociation should be opened for the establishment of a conventional boundary between the two countries, was duly appreciated by the President, who, had he possessed like powers with His Majesty's Government over the subject, would have met the subject in a favourable spirit.'

"Such a suggestion, it seems to me, although dictated by a sincere desire to end the controversy, was well calculated to lead our opponents, as a matter of policy on their part, to clog the previous proposition with insuperable difficulties, and to encourage them to persevere in their attempts to obliterate the treaty language.

"I think the same effect must have resulted from the singular announcement to the British Government, by the late President of the United States, in 1835, in opening the negociation under the vote of the Senate for a settlement of the *treaty* line, 'that if the Plenipotentiaries should fail in a new attempt to agree upon the line intended by the Treaty of 1783, there would probably be less difficulty than before in fixing a conventional boundary, as measures were in progress to obtain from the State of Maine more extensive powers than were before possessed, with a view of overcoming the constitutional obstacles which had opposed themselves to such arrangement.'

"If a direct proposition had come to us through the General Government for a specific line of boundary, yielding to us territory or privileges of navigation equivalent to the unsettled territory, which we might cede to them, it would certainly have presented the question in a different aspect. But the question now is, as I understand it, whether we shall take the lead in abandoning the treaty, and volunteer propositions for a conventional line.

"In respect to the proposition for additional surveys, as it seems to me inexpedient for this State to acquiesce in the proposed negotiation for a conventional line, until it is demonstrated that the treaty line is utterly impracticable and void for uncertainty. I can have no doubt that the line ought to be run, either by a joint commission of exploration and survey, or independently by our own General Government, by its own surveyors. It is evident to me, that Great Britain is determined to avoid, if possible, such an examination and exploration and establishment of the line, and such proofs of the real facts of the case.

"It will be perceived that the President intimates that if the consent of Maine is not obtained, for entering into direct negotiations for a conventional line, and all other measures failing, 'he will feel it to be his duty to submit another proposition to the Government of Great Britain, to refer the decision of this question to a third party.

“ As this right is claimed on the part of the President, as within his constitutional powers, without the consent of Maine, and as no action on the part of Maine in reference to this mode of adjustment is asked by the President, I forbear to comment upon it, but refer it to your consideration.

“ Our situation in relation to this interesting question at this moment demands the exercise of cool and dispassionate judgment, and careful, cautious, but firm action. We owe it to the General Government and our sister states, to do nothing rashly or hastily—to bear and forbear, for the sake of the peace of the nation and the quiet of our borders. But we have a duty to perform to ourselves, and our constituents, who have entrusted the rights and honour of Maine to our keeping. Relying upon your patriotism, intelligence, and caution, I place these documents before you, and ask your action upon them, in the confident hope that the rights and the territory secured to us by our fathers, in the field and the cabinet, will not be impaired or surrendered.

“ EDWARD KENT.

“ Council Chamber, March 14.”

The subject-matter of the foregoing Message having been taken into the consideration of the Senate and House of Representatives of Maine, those bodies on the 23rd day of the same month of March adopted the following resolutions :—

“STATE OF MAINE.

“ Resolves in relation to the North-Eastern Boundary.

“ Resolved—That it is not expedient to give the assent of this State to the Federal Government to treat with that of Great Britain for a conventional line for our North-Eastern Boundary, but that this State will insist on the line established by the Treaty of 1783.

“ Resolved—That as this State has never heretofore given her consent to the appointment of an Umpire under the Treaty of Ghent, in 1814, but has protested against the same, and as she believes it to be a grave question whether the provision in the Treaty for this purpose has not done its office, and is therefore no longer in force, she is not now prepared to give her assent to the appointment of a new Arbitrator.

“ Resolved—That our Senators and Representatives in Congress be requested to urge the passage of a Bill for the survey of the North-Eastern Boundary of the United States, &c., now pending in Congress; and that if said bill shall not become a law during the present session of Congress, and if the Government of the United States, either alone or in conjunction with Great Britain, or the State of Maine, shall not, on or before the first day of September next, establish and appoint a Commissioner for a survey of said Boundary line, it shall then be the imperative duty of the Governor, without further delay, to appoint forthwith suitable Commis-

sioners and Surveyors for ascertaining, running, and locating the North-Eastern Boundary line of this State, and to cause the same to be carried into operation.

“Resolved—That the Governor be requested to transmit to the President of the United States one copy of his Message to the Legislature on the subject of the North-Eastern Boundary, and these Resolutions, and one copy of the same to each of the Heads of Departments at Washington ; one copy to each of our Senators and Representatives in Congress, and one copy to the Governor of Massachusetts.

“ In the House of Representatives, March 23, 1828. Read and passed.

“ E. H. ALLEN, Speaker.

“ In Senate, March 23, 1838.—Read and passed.

“ N. S. LITTLEFIELD, President.

“ March 23, 1838.—Approved.

“ EDWARD KENT.”

On the 22nd of the same month of March, the Governor of Maine sent the following other Message to the Senate and House of Representatives of that State :—

Message to the Senate and House of Representatives.

“ I feel it my duty respectfully to call your attention to the propriety and expediency of taking some measures before you separate, to express and urge the claims and rights of this State in relation to the

fortifications and defences upon our coasts and rivers. Former Legislatures have called the attention of the General Government to this subject; but the works have not yet been commenced, and no recent movement has been made. It is unnecessary for me to enter into a detail of reasons which, at this moment particularly, justify and require a strong and urgent representation addressed to the General Government on this subject. Maine ought not to be left defenceless or exposed in so many points any longer. If her claims are presented by you, as Representatives of the people, in respectful but strong language, we may confidently trust that they will not be neglected or postponed, at this important crisis.

“ EDWARD KENT.

“ Council Chamber, March 22, 1838.”

Upon this last Message, the following Resolutions were, on the 23rd day of the same month, adopted by both branches of the Legislature of Maine :—

State of Maine.—Resolves relating to Fortifications on our Frontier.

“ Resolved—That the maritime frontier, and the extensive interior position of this State, are in a defenceless and exposed situation, and we rely with confidence that the Federal Government will cause suitable fortifications to be erected for the defence of the same.

" Resolved—That the erection of a strong fortification in some eligible position in the Eastern Section of this State, is imperatively and loudly called for by increasing necessity of extending the protection of our laws to the citizens living in that vicinity.

" Resolved—That our Senators in Congress be instructed, and our Representatives requested, to use their influence to procure suitable appropriations for the objects contemplated in the foregoing Resolves.

" Resolved—That the Governor be requested to send one copy of his Message to the Legislature, in relation to fortifications, and one copy of these Resolves to the President and Vice-President of the United States, to each of the Heads of Department at Washington, and to each of our Senators and Representatives in Congress.

" In the House of Representatives, March 23, 1838. Read and passed.

" ELISHA H. ALLEN, Speaker.

" In Senate, March 23, 1838.—Read and passed.

" N. S. LITTLEFIELD, President.

" March 23, 1838.—Approved.

" EDWARD KENT."

Thus the negotiation for establishing a conventional line of Boundary failed; but it had been proposed by Mr. Livingston, in his Letter of the 21st

July, 1832, that a recurrence should be had to commissions of boundary, either consisting of an equal number of Commissioners, attended by an umpire, to be selected by a friendly Sovereign, with a power to decide finally all disputed points; or a commission of the most skilful persons in Europe, to be selected by a friendly Sovereign, and to be attended by agents appointed by both parties in their view and survey of the country, to decide their claims peremptorily.

And it is to this important head of the present inquiry that I next proceed.

CONSIDERATION OF THIS BOUNDARY, AS SETTLED BY
THE TREATY OF 1783, RESUMED.

BEFORE proceeding to the consideration of the proposal of Mr. Livingston, and the correspondence between the two Governments in relation thereto, it will be necessary to revert to the subject of the natural boundary of the great peninsula of the Gulf of St. Lawrence, as settled by the Treaty of 1783 ; and also to offer some observations upon this controversy, as the United States, and as the particular States of Massachusetts and of Maine, are affected thereby.

This line of boundary has hitherto been looked at by me principally with reference to the words of the Treaty, and to the construction of those considered simply as an ordinary contract. It has been looked at, too, by me, principally with reference to present times and present circumstances.

It being generally assumed that the framers of the Treaty were altogether ignorant of the territory which they divided, it must also be assumed that the British Ministry of 1783 were equally unin-

formed with respect to this matter. Now if the historical events which occurred upon the North American continent during the thirty years preceding the Treaty of 1783—if the public characters who figured on this and on the other side of the Atlantic during that eventful period of time be examined, it will be found that there is no adequate cause for imputing to the framers of the Treaty, or the Ministry of 1783, this gross ignorance. Of the public men of North America of that day, Franklin alone need be mentioned, although he was aided in his labours by the experience and wisdom of the then American Congress—that is, of all the men of that day who had most distinguished themselves in the efforts made by the whole people, in the field and in the cabinet, to aggrandize the power of the British, at the expense of the French colonies. There is nothing in the life and character of that man that would justify the belief that he had wilfully inserted an unintelligible description of this line of boundary for the purpose of procuring the aggrandizement of his own nation. He was too wise a man wilfully to provide before-hand a cause or pretext for war to his nation with any other, and still less with a nation of the power and resources of England, wherewith no man was better acquainted than he was. Let one other man on the other side of the question be looked at—I mean Governor Pownall. He had been for several years Captain-General of the four New England States; had sat

in the council convened at Albany in 1757, for the purpose of devising means to repress the power of the French Colonies ; had transmitted to the Earl of Halifax in that year a plan of operations for the conquest of the French Colonies, which was adopted and acted upon in the American campaign of 1759. Sensible of the importance of an intimate geographical knowledge of that continent, he had, in the Colonial Office in Downing Street, collected all the information that could be procured in the old colonies respecting the geography of the country, and had compiled under his superintendence the map commonly called Mitchell's Map, which bears his signature ; he was upon terms of confidential communication respecting American affairs with Mr. Grenville and the other leading men of his day here. He was a man of most powerful and original mind, matured by great experience in the conduct of difficult affairs. Mr. Grenville, Mr. Burke, the Earl of Chatham, the Earl of Shelbourne, and many others, had devoted much attention to American politics. In the wars of 1759 France had been conquered in Germany and America. Though the seat of the war was America, and though the immediate and local interests of America could not but be materially affected by its result, the war was a national war, and carried on there with all the energies of the nation. Without entering into details to be met with in the common historians, the fact that of the present national debt of England one hundred millions is

chargeable to this head of account, sufficiently shows the interest which was taken here in the contest; and it would be difficult to believe that this boundary, so distinctly marked in nature, so essential to the maintenance of the dominion of England over this peninsula and over the gulf, could have been overlooked; considered in reference to the lakes, and to the long line of boundary extending from the Lake of the Woods to the mouth of the River St. Croix, its importance was too palpable not to be seen. But the profitable attention given to this line of water communication by the men of that day is not left to conjecture: we have, in the plan of operations sent by Governor Pownall to the Duke of Cumberland in 1756, heretofore adverted to, one instance of the attention which was then given to this general line of boundary. So much of the paper as relates to the site of the country is here given.

“First, Prior to any observations on the settlers and settlements, it will be necessary to take some notice of the peculiar state and site of the countries in which they are settled; for it is the site and circumstances (I mean those that are unchangeable) of a country which give the characteristic form to the state and nature of the people who inhabit it.

“The consideration of the continent of America may be properly divided into two parts, from the two very different and distinct ideas that the face of the country presents; but more especially from the

two distinct effects which must necessarily, and have actually arisen, from the two very different sorts of circumstances to be found in each tract of country.

“All the continent of North America, as far as known to the Europeans, is to the westward of the endless mountains a high level plane; all to the south-east of these mountains slopes away south-easterly down to the Atlantic Ocean. By a level plane I must not be understood as if I thought there were no hills, or valleys, or mountains in it, but that the plane of a section, parallel to the main face of the country, would be nearly an horizontal plane, as the plane of a like section of this other part would be inclined to the horizon, with a large slope to the Atlantic Ocean. The line that divides these two tracts, that is, the south-east edge of these planes, or the highest part of this slope, may in general be said to run from Onondago, along the westernmost Alleghani ridge of the endless mountains, to Apalatche in the Gulf of Mexico.

“Secondly,—In considering first the main continent, this high plain, it may be observed, with very few exceptions in comparison 'o the whole, that the multitude of waters found in it is, properly speaking, but of two masses; the one composed of the waters of the lakes and their suite, which disembogue by the River St. Lawrence; the other that multitude of waters which all lead into the Mississippi, and from thence to the ocean; the former

into the Gulf of St. Lawrence, the latter into the Gulf of Mexico.

"There are, in all the waters of Mississippi, at least as far as we know, but two falls, the one at a place called by the French St. Antoine, high up on the west or main branch of Mississippi, the other on the east branch called Ohio. Except these, and the temporary rapidity arising from the freshets of spring and the rainy seasons, all the waters of the Mississippi run to the ocean with a still, easy, and gentle current.

"As to all the waters of the five great lakes, and the many large rivers that empty themselves into them, the waters of the great Otawawa River, the waters of the Lake Champlain, of Trois Rivières, and the many others that run into the River St. Lawrence above Quebec, they may all be considered in one mass, as a *stagnation* or lake of a wilderness of waters, spreading over the country by an infinite number and variety of branchings, bays, straits, &c.; for although at particular places of their communications, and at the mouths of their streams, they seem to pour out such an immense ocean of waters, yet when they are collected and assembled together, as at a general rendezvous, where they all disem-
bogue themselves into the River St. Lawrence, the whole embouchure of this multitude of waters is not larger than the Seine* at Paris. The waters of

* About 12 French leagues above Quebec, over against a place called La Loubinière, the River St. Lawrence appears to

each respective mass (not only the lesser streams, but the main general body of each) going through this continent in every course and direction, have, by their approach to each other, by their interlocking with each other, by their communication to every quarter and in every direction, an alliance and unity, and form one mass, a one whole.

“ Let any one raise in his mind the idea of some low country incapable of being travelled, except on the artificial roads, causeways, dykes, &c., that have been made through it, and that these roads have throughout the whole country a communication which connects and forms them into a one system of design, a one whole, such person will readily conceive how easily, and with what few numbers, a General may take possession and hold the command of this country, and when once possessed, how easily he may defend it, by fortifying with redoubts and such works the strong holds and passes in it, and at what an almost insurmountable disadvantage any one who aims to recover it must act even with twenty times the numbers. If these roads and lines have thus a communication forming a one whole, they are the foundation or basis of a

be of a very considerable breadth; but when the tide, which runs up much higher than that place, has its ebb entirely retired, that breadth, which one would have judged to have been that of the St. Lawrence River, remains all dry, except a small channel in the middle, which does not appear to be much larger than the Seine at Paris, nor the waters of it that pass there to have a greater current.

command throughout the whole country, and whoever becomes possessed of them has the command of that country.

"Now let any one behold and consider the continent of America as it really is, a wilderness of woods and mountains, incapable of land carriage in its present natural unwrought form, and not even to be travelled on foot, unless by the good-will of the inhabitants, as such travelling in those woods and mountains is perpetually and unavoidably liable to ambuscades, and to the having the communication from the one part to the other cut off:—let such person also know that the waters for these reasons have ever been the only roads that the inhabitants use, and, until art and force make others, are the only roads that any body of people can in general take. Compare this state of country with what is above described, and the same conclusion, *mutatis mutandis*, will be found to be derived from it.

"Seeing this as fact and experience shows it to be, let such person then recollect what is said above of the communication and alliance amongst the several waters of this continent—of the unity, one mass, and one whole, which they form—he will see in a strong light how the watery element claims and holds dominion over this extent of land,—that the great lakes which lie upon its bosom on one hand and the great River Mississippi, and the multitude of waters which run into it, form there a communication,—an alliance or dominion of the watery ele-

ment, that commands throughout the whole,—that these great lakes appear to be *the throne*, the *centre of a dominion*, whose influence, by an infinite number of rivers, creeks, and streams, extends itself through all and every part of the continent, supported by the communication of, and alliance with, the waters of Mississippi.

“ If we give attention to the nature of this country, and the one united command and dominion which the ~~waters~~ ^{lakes} hold throughout it, we shall not be surprised to find the French (though so few in number) in possession of a power which commands this country; nor, on the other hand, when we come to consider the nature of this eastern part of America, on which the English are settled, if we give any degree of attention to the facts, shall we be surprised to find them, though so numerous, to have so little and languid a power of command, even within the country where they are actually settled. I say a very strong reason for this fact arises out of the different nature of the country prior to any consideration of the difference arising from the nature of their government, and their method of taking possession of this country.

“ This country, by a communication of waters, which are extended throughout, and by an alliance of all these into a one whole, is capable of being, and is naturally, a foundation of a one system of command: accordingly, such a system would, and has actually taken root in it, under the French.

Their various *possessions* through out this country have an order, a connexion and communication, an unity, a system, forming fast into a one government, as will be seen by and by; whereas the English settlements have naturally neither order, connexion, communication, unity, nor system. The waters of the tract on which the English are settled are a number of rivers and bays, unconnected with, and independent of each other, either in interest or natural communication within land. The vague, dissipated, random settlements, therefore (scattered up and down these), will have no more communication or connexion amongst themselves than there is amongst the various independent streams they are settled upon. This country, instead of being united and strengthened by the alliance of the waters which run in it, is divided by these several various streams (detached from, and independent of each other) into many separate detached tracts, that do naturally, and have actually become the foundation of as many separate and independent interests.

“ As far as the communion of the waters of any river, or the communion there may be between any two rivers, extends, so far extended will arise a communication of system, of interest, and command; the settlements, therefore, on this tract of country would be naturally, as they are actually, divided into numbers of little, weak, unconnected, independent governments. Were I to point out the natural division of these tracts and interests, it

would point out a new division of the governments of the colonies, which is not the purport of this paper.

“The consideration of this country, so far as it is connected with, or has any effect upon, the interests and politics of the English settlements, presents itself to view, divided in two ideas,—First, The country between the sea and the mountains; Secondly,—The mountains themselves. The first part is almost throughout the whole capable of culture, and is entirely settled; the second a wilderness, in which are found here and there (in small portions in comparison of the whole) solitary detached spots of ground fit for settlements; the rest is nothing but cover for vermin and rapine, a den for wild beasts, and the more wild savages who wander in it.

“Thus far of the site of the country as it becomes the foundation of a natural difference between the English and French possessions in America.”

Governor Pownall also laid before the Government, in 1759, a memorial containing observations on a line of demarcation between the English and French in North America, so far as it respects that continent only, which will be found at the end of his work on the Administration of the British Colonies. In his war map called Mitchell's Map, he fixes the boundary in the peninsula beyond the highlands of the dividing ridge, and at the high-

lands of the gulf, because he could not but know that barrier would soon be broken by the Power inhabiting the intermediate country, and that the sortie of the great lakes would, with the gulf itself, fall under the control of the Power of which he was so able and faithful a subject. And this is the view which he and men like him must have taken in 1783 of the boundary to divide the territories of the United States from the possessions of England in North America. Accordingly, all men agree that the boundary laid down in Mitchell's Map does not correspond with the boundary described in the Treaty of 1783, whilst it appears to be equally clear that the dividing ridge corresponds with the letter and spirit of the Treaty, and forms an appropriate termination to the line of boundary which commences at the Lake of the Woods, and is drawn through the middle of the great lakes until it strikes the 45th degree of north latitude.

OF THE NEGOCIATIONS BETWEEN THE GOVERNMENT
OF THE UNITED STATES OF AMERICA AND THE
STATES OF MAINE AND MASSACHUSETTS, RESPECT-
ING A CONVENTIONAL LINE OF BOUNDARY TO BE
SUBSTITUTED IN THE PLACE OF THAT OF THE
TREATY OF PEACE OF 1783, ON THE SUPPOSITION
THAT THIS LAST WAS IMPOSSIBLE.

THE Government of the United States of America does not appear to have any interest in the establishment of the boundary claimed by Maine and Massachusetts ; on the contrary, that Government has the same interest as the British Government in having as the boundary the dividing ridge. If the former boundary should be adopted, there would be danger of collision between the people of the two nations. The General Government would be put to the trouble and expense of settling these differences. The policy of the United States is, or ought to be peaceful ; if the boundary claimed by Maine and Massachusetts were established, the Government of the United States, considering the peculiar character of its institutions, could not be sure of maintaining peace with England for any length of time.

The United States might be forced into a war

with Great Britain, or subjected to disagreeable internal dissensions arising from this source ; the territory in question is of no assignable value to the United States as a whole people. Thinking men there well know that their territory is already too large ; then as the property in the soil of the territory lying between the dividing ridge and the mountains of the Gulf, would be in the States of Maine and Massachusetts, the General Government would derive no revenue from its sale. In fact, for the last forty years the General Government has been put to the expense and trouble of a vexatious negotiation in supporting a claim wherein Maine and Massachusetts are alone interested.

But as to Maine and Massachusetts it is far otherwise ; the lands, if surrendered by England, would come to be held by those two States by equal moieties ; the produce of the sale of six millions of acres of ground would be poured into their treasuries in the same proportions ; they would, without taxing their constituents, have put into their hands large sums of money, which might either be made the means of relieving them for a time from the whole or a part of the taxes they now pay, or might be applied to the improvement of their internal communications, or to other objects of public and general utility. The timber which now covers this tract of country would become the subject of large and profitable speculation, its acquisition

would add much directly, and indirectly more, to the wealth of every family in those States.

The question of surrender of any portion of their claim has been looked at by both Maine and Massachusetts with much jealousy, and it has been prosecuted with all the fierceness and recklessness of consequences which belong to protracted litigations of private individuals, when the subject in controversy is deemed to be of large value.

One difference, however, is to be observed between the conduct of these States : it has been seen, in a previous part of this paper, that in 1832 the State of Maine agreed to surrender a portion of her interest in the lands in question, but that the State of Massachusetts refused.

The cause of this difference in their conduct is probably to be found in the circumstance that amongst the leading men in the State of Maine, there are men who understand the question better than it is understood in Massachusetts, and that those men succeeded in influencing the votes of the Legislature on that occasion, without being under the necessity of committing the case, by indiscreet disclosures as to the nature and strength of their title ; whilst, on the other hand, the Legislature of the State of Massachusetts is so numerous, consisting, as is believed, of above 600 members, that such communications could not have been made with safety to that body ; accordingly the

immediate cause of the rejection by Massachusetts of the proposal, was the refusal on the part of the State of Maine, to communicate to the State of Massachusetts certain private correspondence relating to this matter, in the possession of the State of Maine, the nature of which private correspondence may be conjectured with tolerable certainty.

PROCEEDINGS OF THE STATES OF MAINE AND
MASSACHUSETTS, BETWEEN THE PERIOD OF
THE CONVENTION OF 1827 AND THE RESOLU-
TION OF THE SENATE OF THE UNITED STATES
REJECTING THE AWARD OF THE KING OF THE
NETHERLANDS.

In the year 1827 discussions and correspondence took place between the General Government and the State of Maine, respecting the reference then made, or about to be made, to the King of the Netherlands ; and a protest was in that year made by the State of Maine against the General Government assuming the right, under the Constitution, to cede or transfer any portion of the territory of any State ; and the General Government was reminded that the State of Maine had already declared their views of the Convention of 1827, the authority of which they never admitted, and that they should not consider themselves bound by any decision under it. (Correspondence, &c. No. 5.)

On the 24th February, 1832, a message was delivered by the Governor of Maine to the House of Representatives of that State, informing them that he had been given to understand that the award of the Arbiter would be eventually adopted by the

General Government, and that it had been proposed that Maine should cede to the United States the claim to the territory which lies northward and eastward of the line recommended by the Arbiter for an ample indemnity, in order that the General Government might make such arrangement with Great Britain as should comport with the interests of the United States. The Governor therefore submitted to the Legislature the expediency of authorizing their Agent at Washington to make an arrangement for an indemnity with the General Government, which would relieve their relations with Great Britain from much embarrassment, and put an end to those collisions with the British authorities, which, if continued, must inevitably prevent the settlement of the territory, and endanger the peace of the nation. It was declared by the Governor that it was the decided and unanimous opinion of the Agent at Washington and of the delegation of the State in Congress, that such an arrangement should be made, by which the State would be amply remunerated in a pecuniary point of view for the loss to be sustained; and the principle would not be abandoned, in which the State had contended that the United States and the General Government have not the constitutional power to alienate any portion of the territory of a State without its consent. It was at the same time recommended by the Governor, that the State of Massachusetts should be invited to unite in the proposed

arrangement. The whole territory of the State of Maine was formerly a part of Massachusetts, which purchased, in the year 1674, the grant of Charles I. of the province or county of Maine to Fernando Gorges; and that State, by the Act of Separation, claimed the fee simple of a moiety of the wild lands; but the residue, and the entire sovereignty and jurisdiction, were vested in Maine, which was admitted into the Union on the 15th of March, 1820, having been thus constituted a separate State by a cession of a part of Massachusetts.

The Legislature of Maine promptly acceded to the measure recommended by their Governor; but the Legislature of Massachusetts declined to co-operate, as the Governor of Maine refused to communicate some confidential letters received from their Agent at Washington. (Correspondence, &c., No. 40, pp. 66 and 67.)

In the year 1832 the Legislature of the State of Maine passed several resolutions with reference to the decision of the King of the Netherlands upon the north-eastern boundary; and appointed Mr. Preble, who had then recently returned from Holland, to present them to the Senate of the United States. Mr. Preble proceeded forthwith to Washington, where he remained for some time, charged by the State of Maine to protect their interests respecting the boundary between that State and New Brunswick. The proceedings of the secret session of the Council and House of Representatives of

Maine, were subsequently disclosed to the public ; and it appears that an agreement had taken place, subscribing, under certain conditions, to the decision of the King of the Netherlands.

Those conditions, as given in the Maine newspapers, were, that Commissioners on the part of the United States and on the part of the State of Maine were to be appointed, in order to negotiate as to the indemnity to be given by the former to the latter, for the loss which she alleged she would suffer by her acceptance of the Netherland arbitration ;—that the result of this commission was to be laid before the Legislature for their acceptance or rejection. The result of all these proceedings was, as has been already stated, the refusal of the Senate of the United States to recommend to the President to acquiesce in the decision of the King of the Netherlands.

PROPOSAL OF MR. LIVINGSTON.

THE establishment of a conventional line of boundary having thus become hopeless, the only remaining subject of consideration now is the proposal of Mr. Livingston, and the proceedings had thereupon. Its importance renders it necessary that it should be given in the words of Mr. Livingston himself. The letter of Mr. Livingston, in which this proposal was first made, shortly followed the rejection of the award of the King of the Netherlands by the Senate of the United State, and bears date April 30th, 1833, and is as follows :—

The Hon. Edward Livingston to Sir C. R. Vaughan.

“ Department of State, Washington, April 30, 1833.

“ The undersigned, &c., has had the honour to receive from Sir Charles Vaughan, &c., his note of the 14th instant, communicating the substance of the instructions given by His Britannic Majesty's Government, in relation to the disputed question of the boundary between the United States and the British Province of New Brunswick ; and has laid

the same before the President, who has directed the undersigned to say, that he sees with great pleasure that the British Government concurs, with that of the United States, in the position, that His Netherland Majesty had not decided the question submitted to him, since by Sir C. Vaughan's note it is acknowledged, 'that the arbitrator, furnished by each claimant with every fact and argument that had been adduced on either side of the question, had declared the impossibility of tracing, in conformity with the description contained in the Treaty of 1783,' the boundary line in question; and as the determination of that line, according to the Treaty of 1783, was the only question submitted to the august arbitrator, and he having declared that he found it impossible to trace it in conformity with the Treaty, it follows, that his inability to decide the point submitted to him, leaves the high parties to the submission precisely in the situation in which they were prior to the selection of His Netherland Majesty to be the arbitrator between them, that is to say, they are thrown back to the Convention of the 29th September, 1827. By that Convention it was agreed to submit the question, which was the true boundary according to the Treaty of 1783, to the decision of an arbitrator to be chosen between them. The arbitrator selected having declared himself unable to perform the trust, it is as if none had been selected, and it would seem as if the parties to the submission were

bound by their contract to select another; but this would be useless if the position assumed by the Government of His Britannic Majesty be correct, 'that it would be utterly hopeless at this time of day to attempt to find out, by means of a new negotiation, an assumed line of boundary, which successive negotiators, and which Commissioners employed on the spot, have during so many years failed to discover.' The American Government, however, while they acknowledge that the task is not without its difficulties, do not consider its execution as hopeless. They still trust that a negotiation, opened and conducted in a spirit of frankness, and with a sincere desire to put an end to one of the few questions which divide two nations, whose mutual interest it will always be to cultivate the relations of amity, and a cordial good understanding with each other, may, contrary to the anticipations of His Britannic Majesty's Government, yet have a happy result; but if this should unfortunately fail, other means still untried remain. It was, perhaps, natural to suppose that negotiators of the two Powers coming to the discussion with honest prejudices, each in favour of the construction adopted by his own nation on a matter of great import to both, should separate without coming to a decision. The same observations may apply to commissioners, citizens, or subjects of the contending parties, not having an impartial umpire to decide between them; and, although the selection of a sovereign arbiter

would seem to have avoided these difficulties, yet this advantage may have been more than counter-vailed by the want of local knowledge. All the disadvantages of these modes of settlement, heretofore adopted, might, as it appears to the American Government, be avoided by appointing a new commission, consisting of an equal number of Commissioners, with an umpire selected by some friendly Sovereign from among the most skilful men in Europe, to decide on all points on which they disagree, or by a commission entirely composed of such men so selected, to be attended in the survey and view of the country by agents appointed by the parties. Impartiality, local knowledge, and high professional skill would thus be employed, which, although heretofore separately called into the service, have never before been combined for the solution of the question. This is one mode, and perhaps others might occur in the course of the discussion, should the negociators fail in agreeing on the true boundary. An opinion, however, is entertained, and has been hereinbefore expressed, that a view of the subject, not hitherto taken, might lead to another and more favourable result.

“A free disclosure of this view might, according to the dictates of ordinary diplomacy, with more propriety, perhaps, be deferred until those of His Britannic Majesty's Government should be more fully known, or, at least, until that Government had consented to open a negotiation for determin-

ing the boundary; but the plain dealing with which the President desires this and all his other communications with Foreign Governments to be conducted, has induced a developement of the principle for the consideration of His Britannic Majesty's Government.

"Boundaries of tracts and countries where the region through which the line is to pass is unexplored, are frequently designated by natural objects, the precise situation of which is not known, but which are supposed to be in the direction of a particular point of the compass. Where the natural object is found in the designated direction no question can arise. Where the course will not touch the natural boundary the rule universally adopted is, not to consider the boundary as one impossible to be traced, but to preserve the natural boundary, and to reach it by the nearest direct course. Thus, if after more accurate surveys shall have been made it should be found that the north course from the head of the St Croix should not reach the highlands which answer the description of those designated in the Treaty of 1783, then a direct line from the head of the St. Croix, whatever may be its direction to such highlands, ought to be adopted, and the line would still be conformable to the Treaty.

"As this principle does not seem hitherto to have been adopted, it appears to the Government of the United States to offer to the Commissioners who may be appointed the means of an amicable adjustment.

"When the note of the undersigned to Mr. Bankhead in July last was written, reasonable hopes were entertained that the arrangement therein spoken of, by which the Government of the United States might be enabled to treat for a more convenient boundary, would, ere this, have taken place. The anticipations then entertained have not as yet been realized, and the Government of the United States can only, in the present state of things, treat on the basis of the establishment of the boundary presented by the Treaty.

"As the suggestion in relation to the navigation of the St. John was introduced only in the view of its forming a part of the system of compensations in the negotiation for a more convenient boundary, if that of the Treaty of 1783 should be abandoned, it is not now insisted on.

"In conclusion, the President has remarked with sincere pleasure in Sir C. Vaughan's note the expression of a desire on the part of his Government to cultivate and increase the harmony and good understanding which so happily subsist between the two countries, and to put an end to all questions that may in the least degree interrupt it, a disposition which is warmly reciprocated by the President.

"The undersigned, &c.

"(Signed)

"EDWARD LIVINGSTON.

"*Right Hon. Sir C. R. Vaughan,*

"&c. &c. &c."

The letter of Sir C. R. Vaughan to Mr. Livingston, in answer to this letter, bears date the 11th May, 1833, and is as follows :—

Sir C. R. Vaughan to the Hon. Edward Livingston.

“Washington, May 11, 1833.

“The undersigned, &c., has the honour to acknowledge the receipt, on the 5th instant, of the note of the Secretary of State of the United States, dated the 30th April, in answer to the communication made by the undersigned, of the instructions which he has received from his Government, relative to the disputed boundary, and he begs leave to make some observations before he submits it to the consideration of the British Government.

“With regard to the entire concurrence of the British Government with that of the United States in the position that His Netherland Majesty has not decided the question submitted to him, because he had declared it impossible to trace the boundary according to the Treaty of 1783, though both Governments must agree in the impossibility of tracing a boundary line by the defective description of it in that Treaty, the two Governments took very different views of the nature of the obligations which they had incurred in common under the Convention of Arbitration. Great Britain felt bound to accept the award of the arbitrator who suggested a line of boundary, having been unable to trace that described in the Treaty, notwithstanding that the acceptance

would cause a great sacrifice of territory, hitherto considered as belonging to the British Crown. According to the note of Mr. Livingston of the 21st July, 1832, the Senate of the United States 'determined not to consider the decision of the King of the Netherlands as obligatory, and they refused to advise and consent to its execution.'

"This rejection of the decision of the arbitrator by the Government of the United States, has thrown the parties, as Mr. Livingston observes, into the situation in which they were, prior to the selection of His Netherland Majesty to be the arbitrator between them. It may be observed also, that though the tracing of the boundary line according to the Treaty of 1783, appeared, from the statements delivered by the respective parties, to be the principal object of arbitration, the King of the Netherlands was invited in general terms 'to be pleased to take upon himself the office of arbitration of the difference between the two Governments.'

"It was a measure adopted in order to put an end to tedious and unsatisfactory negotiations which had occupied the attention of the two Governments for more than forty years, and by the VIIth Article of the Convention it was agreed, 'that the decision of the arbiter when given, shall be taken as *final and conclusive*, and shall be carried without reserve into immediate effect.'

"The undersigned cannot but regret the rejec-

tion of the decision of the King of the Netherlands, when he sees throughout the note of Mr. Livingston, all the difficulties which attend the endeavours of the two Governments, actuated by the most frank and friendly spirit, to devise any reasonable means of settling this question.

“Mr. Livingston seems to be persuaded that a renewed negotiation may yet have a happy result, and the undersigned observes with satisfaction, that the Government of the United States has consented not now to insist upon the navigation of the St. John’s River, a claim which the British Government refused to consider in connexion with the boundary question.

“But the arrangement in progress last summer having failed, which was to result in enabling the Government of the United States to treat for a more convenient boundary, that Government in the present state of things can only treat on the basis of the establishment of the boundary presented by the Treaty.

“The undersigned is convinced, that it is hopeless to expect a favourable result from a renewed negotiation upon that basis. With regard to Mr. Livingston’s proposal, that in the event of negotiation failing, the two Governments may have recourse to a commission of boundary, composed of equal numbers selected by each party, to be attended by an umpire, chosen by a friendly Sovereign, to decide at once all disputed points,—or that a commission

of some of the most skilful men in Europe should be selected by a friendly Sovereign, and should be sent to view and survey the disputed territory, attended by agents appointed by the parties,—the undersigned can only express his conviction, that after the expence, delay, and unsatisfactory result of the commission of boundary under the Vth Article of the Treaty of Ghent, it must be with great reluctance that the British Government consents to have recourse to such a measure.

“He does not conceive that it would be an easy task, to engage in such a service, all the impartiality, local knowledge, and high professional skill, ‘which it would be necessary to combine for ‘the solution of the question’ to be submitted, which either the umpire in one instance, or the commission of scientific persons in the other, were to decide peremptorily.

“The undersigned does not sufficiently comprehend the other view which Mr. Livingston has partially developed in his note, and which the latter conceives might lead to a more favourable result ; it seems applicable to the manner in which the line due north from the sources of the St. Croix River may be drawn, in conformity with the Treaty of 1783, though not strictly according to the terms in which that Article is drawn up. The natural feature of the boundary which Mr. Livingston supposes to exist, and to which the line in question is to be drawn, it is presumed, are the highlands mentioned

in the Treaty, the fixing the position of which highlands has formed the principal difficulty hitherto in adjusting the boundary. A deviation from the direct north line laid down in the Treaty, might lead to an oblique line being drawn to mountains to the eastward of it, which would trench upon His Majesty's territories of New Brunswick.

"The undersigned does not however venture, with the imperfect knowledge which he has of all the bearings of the view developed by Mr. Livingston, to do more than suggest a doubt of its advantages. The rejection of the award of the arbitrator, by the Government of the United States, revives to their full extent the pretensions of Great Britain, and it becomes an object of great importance to put an end to this question of boundary; 'one of the few questions,' as Mr. Livingston observes, 'which divide two nations, whose mutual interest it will always be to cultivate the relations of amity and a cordial good understanding with each other.'

"It is the duty of the undersigned to transmit to his Government immediately the note of Mr. Livingston, but at the same time he cannot resist from inviting the Secretary of the United States to offer, without waiting the result of that reference, some more prompt and effective measure for the settlement of the boundary than the renewal of a negotiation on an inadmissible basis, or recourse again to commissions of boundary, which, though

upon an improved plan, so far as the insuring of a final result may be concerned, are too complicated in their nature to bring about a speedy or a satisfactory decision.

" The Undersigned, &c.,

" (Signed) CHAS. R. VAUGHAN.

" *The Hon. Edward Livingston,*

" &c. &c. &c."

The following letter, bearing date the 28th May, 1833, is Mr. Livingston's reply to the last-mentioned letter of Sir C. R. Vaughan :—

The Hon. Edward Livingston to Sir C. R. Vaughan.

" Department of State, Washington, May 28, 1833.

" SIR,

" In the two conversations we have had, on the 13th and 27th instant, you requested some further developement of the propositions contained in my note of the 30th April.

" The principal object of that note was to show, that the failure of the several endeavours which had been made, to ascertain the true boundary between the United States and the British Provinces of New Brunswick and Lower Canada, ought not, as is thought by His Britannic Majesty's Government, to be attributed to any insuperable difficulty, but rather to the inefficiency of the means heretofore resorted to, in order to secure such a decision

as should be binding on both parties, and to the want of attention by the commissioners and arbiter severally employed for that purpose, to an established rule in the settlement of boundaries.

“ The first point seems to be fully explained in my note above referred to, and I repeat, that the President will agree to either of the modes therein suggested, to secure a final decision of the question. The reasons why, under the present circumstances, he cannot undertake to negotiate upon any other basis than that of the Treaty of 1783, drawn from the nature of our Government, were fully explained to you in those conversations ; and the probability of ascertaining the boundary according to that Treaty, by applying the principle, to which I perhaps too briefly alluded in my note, was farther developed. That you may present it in a more precise form to your Government, I now repeat the substance of my observations.

“ The boundary, as far as the head of the St. Croix, is ascertained and agreed upon by both nations. The monument erected there is then a fixed point of departure. From thence we have a two-fold description of boundary ; a line in a certain direction, and a natural object to which it was supposed a line in that direction would lead, ‘ A line ‘ from the source of the River St. Croix directly ‘ north,’ and ‘ the highlands which divide the waters ‘ that flow into the Atlantic Ocean from those ‘ which flow into the River St. Lawrence.’ The

American Government have believed that these two descriptions would coincide, that is to say, that the highlands designated by the Treaty, would be reached by a north line drawn from the head of the St. Croix ; they make no pretensions farther east than that line, but if, on a more accurate survey, it should be found that the north line mentioned in the Treaty should pass east of the highlands therein described, and that they should be found at some point further west, then the principle to which I refer would apply, to wit, that the direction of the line to connect the two natural boundaries, must be altered so as to suit their ascertained positions. Thus in the annexed diagram, suppose A. the monument at the head of the St. Croix, A. B. the north line drawn from thence. If the highlands described in the Treaty should be found in the course of that line, both the descriptions in the Treaty would be found to coincide, and the question would be at an end. If, on the contrary, those highlands should be found at C. or D., or at any other point west of that line, then the eastern boundary of the United States would be the line A. C., or A. D., or any other line drawn directly from the point A., to the place which should be found to answer the description of the highlands mentioned in the Treaty.

“ This being fully understood, the President is willing, in order to simplify the operation, that the commission shall be restricted to the simple ques-

tion, of determining the point designated by the Treaty as the highlands which divide the waters, to which point a straight line shall be drawn from the monument: and that this line shall, as far as it extends, form part of the boundary in question,—that they shall then designate the course of the line along the highlands, and fix on the point designated as the north-westernmost head of the Connecticut River.

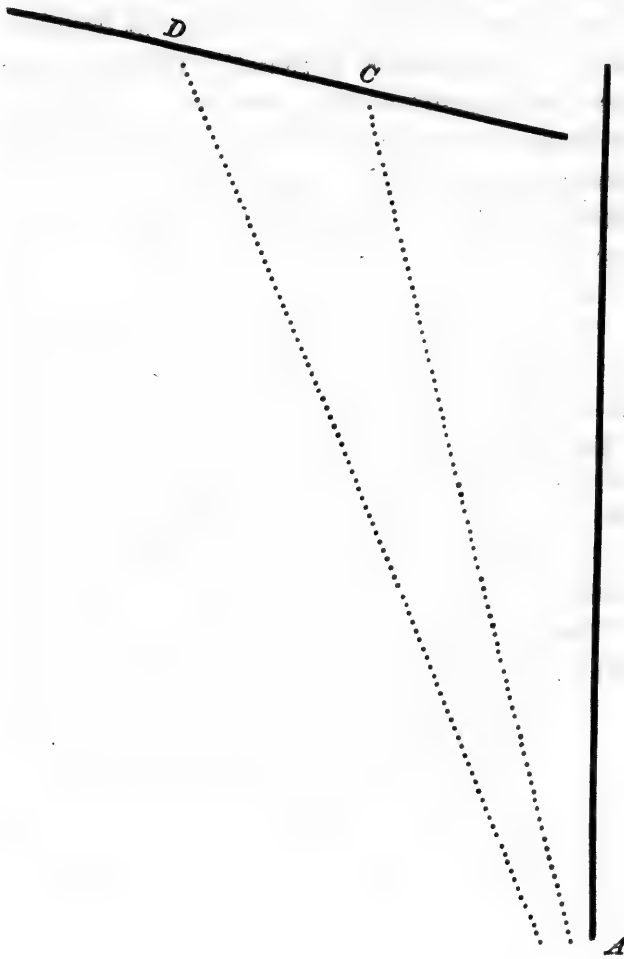
“ It will be obvious to you, Sir, that until a survey and decision shall be had, in one of the modes pointed out in my note, or in some other to be agreed on, the President cannot designate any line which he would be willing to adopt as the boundary; but he directs me to repeat his firm persuasion, that a speedy and satisfactory arrangement may be made, by a negotiation carried on by both parties in the spirit of conciliation, by which he is actuated, and which, he has not the least doubt, will direct the Government of His Britannic Majesty.

“ I have the honour to be, &c.

“ (Signed) EDWARD LIVINGSTON.”

“ *Rt. Hon. Sir C. R. Vaughan,*

“ &c. &c. &c.”



Sir C. R. Vaughan, in his letter of the 31st May, 1833, having asked further explanations from Mr. McLane, the Secretary of State for Foreign Affairs of the United States of America, received from Mr. McLane the following answer to his inquiry in a letter of June 5th, 1833. In this letter Mr. McLane, after adverting to the difficulties standing in the way of the establishment of a conventional line of boundary, goes on to say—

“Under these circumstances the President directed the proposition submitted in Mr. Livingston’s note of 30th April, as affording not only a reasonable prospect, but in his mind the certain means of ascertaining the boundary called for by the Treaty of 1783, and of finally terminating all the perplexities which have encompassed this subject.

“In reply, therefore, to the wish expressed by Sir C. Vaughan to be informed what limitations it is intended to be put upon the course to be pursued by the special Commissioners, whether their attention is to be directed to any particular spot, or whether they are to be left at liberty to stop at the first highlands answering the required description with which they may meet after their departure from the monument, the undersigned has the honour to state that it is not expected that any limitations will be put upon the course to be pursued by the special Commissioners but such as are re-

quired by a faithful adherence to the description of boundary in the Treaty of 1783.

"It is true that Great Britain has hitherto insisted upon the highlands of the Treaty of 1783 being sought for exclusively south of the St. John River, but it is also true that the United States have, with equal confidence and pertinacity, insisted upon seeking for them exclusively north of that river.

"It is the difficulty of reconciling these conflicting pretensions which has hitherto prevented the settlement of the boundary question, arising chiefly, however, from the impracticability of finding a point of highlands answering the description in the Treaty to which a line due north from the monument could be drawn.

"It is now proposed, therefore, to make another effort, and by means which heretofore have not been tried, to overcome this difficulty, and discarding the due north line, should that become necessary, to seek for and find, in the first place, 'the highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean;' and when these shall be found in any part of the disputed territory, north or south of the St. John's River, to draw a line from the monument to the said highlands, and to that point thereof which shall be nearest to a due north line from the monument. Mr. Livingston, in his note of the 28th May, has already provided against

any deviation eastward from the direct north line from the St. Croix.

"The undersigned, &c.,

"(Signed) LOUIS McLANE."

"*Rt. Hon. Sir C. R. Vaughan,*

"&c., &c., &c."

The object in this part of the inquiry being to bring together in one view all that is to be found in the correspondence of the American negociators, which may serve to render fully intelligible the proposal of Mr. Livingston, it may be proper here to insert extracts from a letter from the Hon. Louis McLane to Sir C. R. Vaughan, dated March 11, 1834:—

"In all questions of boundaries of tracts and countries designated by natural objects, the plain and universal rule of surveying is, first to find the natural object, and then to reach it by the nearest direct course from any given point, and with the least possible departure from the particular course called for in the original deed or Treaty. The obstacles by which the Commissioners, in the first instance, and the Arbiter afterwards, were prevented from ascertaining the boundary upon the first point of difference, was the supposed impossibility of finding such highlands, answering the description of the Treaty of 1783, as could be reached by a line drawn due north from the monument; whereas, had either first found the highlands called for by the Treaty, and afterwards, in conformity

with the rule already adverted to, traced the line from the monument to such highlands in the manner above indicated, it is believed the true line of the Treaty could have been ascertained.

"Here then is one plain and usual means by which this difficult question may be settled, but which has not yet been resorted to in the previous efforts of the party to adjust it. This means the proposition submitted by the President proposes to employ, and in the manner particularly referred to in the letters which have been heretofore addressed by the Secretary of State to Sir Charles R. Vaughan.

"Now the proposition of the President is to find the highlands answering the description of those called for by the Treaty of 1783, and to them, from the monument, to run a direct line; and the President does not doubt that, with the aid of more accurate surveys by skilful persons on the ground, and freed from the restraint hitherto imposed by a due north line, such highlands may be found, and which either the Commissioners or the Arbiter might have found had they adopted the rule now proposed."

And subsequently, in the same letter, Mr. McLane says:—

"Although the efforts already made for that purpose have proved unsuccessful, neither parties should be deterred, seeing how deeply the subject affects their amicable relations, from resorting to others more promising in their nature, but which, on previous occasions, have been overlooked.

" If, after a resort to the plain and universal rule now recommended, it should be found impracticable to trace the boundary according to the Treaty of 1783, it would be time enough, and might then be desirable to enter upon a negotiation for terminating the difficulty by the adoption of a conventional line satisfactory to both parties.

" This mode, however, could only be adopted with the special assent of the State of Maine, and it is believed that the probability of such assent in the present state of the negotiation, while on the part of the authorities of that State no doubt is entertained of the practicability of ascertaining the true line, and while so much confidence is felt in the means now proposed, is too remote to justify any attempt to procure it.

" It would also be impossible to reconcile the people of that State to the result of any negotiation in which should be at once conceded those points respecting which, in the course of his reasoning, it is supposed the Arbiter committed the most serious error, and by which he was prevented from coming to a decision by which both parties would have been bound.

" The proposition directed by the President, therefore, is to submit the whole subject, so far as it relates to this first point of difference, to the commission mentioned in the note to Mr. Livingston of the 30th of April, and clothed with the same powers as belonged to the Commissioners under the

Treaty of Ghent, and to the Arbiter, in order that, instructed by the introduction of the rule now explained and not adopted by their predecessors, they may have greater means for a satisfactory discharge of their duties.

“ For a successful termination of the labours of the commission to be instituted under this proposition, an unlimited discretion over all the points necessary to a proper decision of the subject committed to it is indispensably necessary ; and it must be obvious that if the new Commissioners should be restricted to the reasoning of the Arbiter, either in its premises or conclusions, the only object of their appointment would necessarily be defeated.

“ The undersigned believes that, in the foregoing observations, it will be found that a sufficient answer has already been given to the suggestion of Sir Charles R. Vaughan, that the objection to the power of the Government of the United States to adopt the line recommended by the King of the Netherlands, will be equally fatal to that suggested by Mr. Livingston. It may not be improper, however, further to observe, that ‘the objection arises from the want of authority in the General Government to adopt a line confessedly different from that called for by the Treaty of 1783; but their authority to ascertain that line being unquestionable, their power to employ all the legal and usual means for its ascertainment is equally clear. It is with this view that the proposition presented by the

President proposes to conform the course to the natural object, whereby the true line of the Treaty would be legitimately ascertained."

In a subsequent letter from Mr. McLane to Sir C. R. Vaughan, dated March 21, 1834, relating to Mr. Livingston's proposal, he says:—

"The President has been at no time less sensible of the difficulties attending the settlement of this subject, than of the vital importance of its settlement to the future amity between the two nations; and he has never been unwilling to give every evidence of his solicitude to the full extent of his constitutional authority. He duly appreciates the observation of the Committee of the Senate alluded to by Sir Charles R. Vaughan, that it is a question of much perplexity and difficulty: and he has, therefore, always endeavoured to bring his mind to the consideration of the subject with that firmness and fortitude, no less than with the most friendly disposition, necessary to overcome the difficulties with which it is beset. He perceived, however, that in all the previous efforts between the two Governments to ascertain the boundary according to the line of the Treaty of 1783, and in the deliberations of the Arbiter, a natural and uniform rule in the settlement of disputed questions of location had been altogether overlooked, and he perceived no reason to suppose that it had been present to the minds of the respectable Committee

of the Senate in making their report. He could not fail to perceive that in every past effort to ascertain the boundary of the Treaty, the chief, if not the only difficulty arose from a supposed necessity of finding highlands corresponding with the description required by the Treaty, to which a line due north from the monument might be drawn; whereas it was plain that if such highlands could be anywhere discovered, it would be a legal execution of the Treaty to draw a line to them, from the monument, by the most direct route, without regard to the precise course given in the Treaty. Not doubting that the adoption of this principle will remove the chief difficulty which has hitherto embarrassed the subject, it became his duty to urge its adoption upon the Government of His Britannic Majesty, as one, and perhaps the best expedient which remains for ascertaining the line of 1783, to the mutual satisfaction of the parties.

“ The undersigned is unable to perceive in the plan proposed any thing so complicated as Sir Charles appears to suppose. On the contrary, next to its conformity with the uniform legitimate principles of surveying in such cases, it is chiefly recommended to the approbation and confidence of the President by its entire simplicity. In fact, the plan requires chiefly the mere discovery of the highlands called for by the Treaty of 1783, which, being ascertained, the mode of reaching them, upon the principle now suggested, is so simple, and is so clearly delineated in the diagram presented in the

letter of Mr. Livingston of the 28th May, 1833, that no observations of the undersigned could make it plainer. It is presumed that it will not be contended that the difficulty of discovering such highlands is insuperable. The Arbiter himself, with the lights before him, is not understood to have found it impracticable, at least to his own satisfaction, to find highlands answering the description of the highlands of the Treaty; his embarrassment arose from not being able to find them in a direction due north from the monument, and certainly it cannot be more difficult for Commissioners on the spot, with the fullest means of personal observation, to arrive at a conclusion as to the locality of the highlands, equally satisfactory to their own judgment.

In the letter from the Hon. John Forsyth to Sir C. R. Vaughan, bearing date the 28th of April, 1835, Mr. Forsyth says:—

“The submission of the whole subject, or any part of it, to a new arbitrator, promised too little to attract the favourable consideration of either party. The desired adjustment was, therefore, to be sought for in the application to the controverted question of some new principle not heretofore acted upon, and the consequent prosecution of investigations hitherto unattempted, because regarded as irrelevant and inapplicable. He thought, and, with respectful deference to the apprehension of His Majesty's Government, he still thinks, that with the hearty co-operation on the part of His Majesty's Government, the object, which is so desirable to

all parties, a fair and equitable settlement of the boundary in dispute, according to the Treaty of 1783, by a faithful prosecution of the plan which has been submitted, by his directions, to the consideration of His Majesty's Government is attainable.

"By the Treaty of 1783 the boundary between the dominions of the two Governments was to be a line drawn from the source of the St. Croix directly north to the highlands, which divide the rivers which fall into the Atlantic Ocean from those which fall into the River St. Lawrence; the point at which the due north line was to cut the highlands was also designated as the north-west angle of Nova Scotia, thence along the said highlands to the north-westernmost head of the Connecticut River, &c. The ascertainment of the true north-west angle of Nova Scotia, or the designation of the highlands referred to, has been the principal difficulty by which the settlement of the boundary has been so long retarded, and it was the supposed impracticability of satisfactorily accomplishing that ascertainment or designation which prevented the adjustment by the arbitrator. The United States have always contended that the point to which they have uniformly claimed is upon certain highlands north of the River St. John, which answers, in every respect, the description given in the Treaty, and is the true north-west angle of Nova Scotia, a claim which is not intended to be abandoned or weakened by any thing the President has authorized to be proposed or said

upon the subject. If the highlands now referred to do in truth answer the description, no doubt could be reasonably entertained of the justice of our claim, as there would be a perfect concurrence in the course prescribed, and the natural object designated by the Treaty; but on the part of Great Britain it has been strenuously contended that no highlands answering the description in the Treaty could be found northward of the River St. John, upon a line running directly north; and it has therefore been insisted that the due north line shall be deemed to terminate to the southward of that river, and at a place called Mars Hill. The President is advised that it is a rule in practical surveying, which prevailed in this country before the Revolution, and has since been, and still is, considered obligatory, that when there is found in the location of the premises described in a deed or any other instrument, a disagreement in the course of a given line, and the bearing of a natural object called for, as its termination, the given course must be made to yield to the given object, and the line closed at the object, in a direction corresponding, as nearly as practicable, to the course prescribed, upon the principle that the natural object furnishes evidence of the true intention of the parties, which may be relied upon with more safety than the course, errors in which constantly occur, from the imperfection of the instruments used, or the want of knowledge of those in whose hands they may have been placed.

He has thought this rule might be rightfully and properly applied to the matter now in controversy, and is willing to agree that if, upon a thorough examination, it shall appear to those appointed by the parties to make it, that His Majesty's Government is correct in its assumption, that the highlands hitherto claimed by the United States as those designated by the Treaty, do not answer that description, but that those highlands are to be found to the west of the due north line, that the boundary line should be closed according to the established rule in practical surveying. Whether there are highlands to be found in a north-westerly course from the source of the St. Croix answering better to the description given in the Treaty of 1783 than those heretofore claimed by the United States, and so clearly identified as to remove all reasonable doubt, remains to be ascertained. No inquiry into this fact, with a view to apply it to the respective and conflicting pretensions of the parties, has hitherto been made.

It was under these circumstances, and with such impressions, that Mr. Livingston was authorized to propose to Sir Charles R. Vaughan, for the consideration of his Government, that a new commission should be appointed, consisting of an equal number of Commissioners, with an umpire, selected by some friendly Sovereign, from among the most skilful men in Europe, to decide on all points in which they might disagree; or a commission en-

tirely composed of scientific Europeans, selected by a friendly Sovereign, to be attended in the survey and examination of the country, by agents appointed by the parties. The adoption of this course would, it was urged, have the benefit of strict impartiality in the Commissioners' local knowledge and high professional skill, which, though heretofore, separately called into action, have never before been combined for the solution of the question.

In consequence of a wish expressed by Sir Charles R. Vaughan, to be more fully advised of the views of the President upon the subject of this proposition, he was furnished with a diagram, by which the manner in which it was intended the line should be run, in the event of highlands being discovered better answering the description of the Treaty than those claimed by the United States, was pointed out distinctly; while to relieve His Majesty's Government from all apprehension of a more extended claim of territory on our part, Mr. Livingston was authorized to disclaim, and did disclaim, all pretensions on the part of the United States to the territory east of the line, which had been previously run directly north from the source of the St. Croix. Actuated by that sincere desire to effect, in some proper way, the settlement of the boundary in question, by which he had been governed, Mr. McLane was, subsequently, authorized by the President to propose to Sir C. R. Vaughan,

for the consideration of His Majesty's Government, that, if the proposition made by Mr. Livingston, for the adjustment of one of the three points of difference were accepted, the United States would, on their part, consent to adopt the place designated by Great Britain, as the north-westernmost head of the Connecticut River; and would also, as to the remaining point, the line from the Connecticut River to the St. Lawrence, adopt that which was run by Valentine and Collins, which, it was believed, would not be unacceptable to Great Britain.

The negotiation upon this proposal was mixed up with the negotiations for a conventional line of boundary, the details and result of which have already been given, and need not here be repeated.

So far as the Commission of Exploration and Survey was concerned, His Majesty's Government intimated a disinclination to that measure, unless certain preliminary points were settled, without which it was thought that the Exploration and Survey would lead to no useful result; and, on the contrary, that if such survey did not furnish fresh subject of difference, it could at best only bring the question back to the same point at which it then stood.

Upon receiving communication of the above-mentioned letter of Mr. Forsyth, of the 28th April, 1835, Lord Palmerston transmitted to Mr. Bankhead, the Chargé d' Affaires of Great Britain at Washington, the following letter and instructions:—

Viscount Palmerston to Charles Bankhead, Esq.

" Foreign Office, October 30, 1835."

" SIR,

" His Majesty's Government have taken into their most deliberate consideration the note presented by Mr. Forsyth to Sir Charles Vaughan on the 28th April last, upon the boundary question, and I have now to give you instructions for a reply to the Government of the United States.

" His Majesty's Government have observed with the greatest pleasure, during the whole of the communications which of late have taken place on this question, the friendly and conciliatory spirit which has been manifested by the President of the United States ; and they are themselves equally animated by the sincerest desire to settle this matter by an arrangement just and honourable for both parties.

" His Majesty's Government are fully convinced that if the repeated attempts which they have made to come to an understanding on this subject with the Government of the United States, have not been attended with success, the failure of their endeavours has been owing to no want of a corresponding disposition on the part of the President, but has arisen from difficulties on his side, over which he has had no control.

" His Majesty's Government, however, do not the less lament that the advances which they have made have been fruitless ; but with their regret is mingled the satisfactory consciousness which they feel, that

in making those advances, they have gone to the utmost extent to which a due regard for the honour and interests of the British Crown could permit them to go.

"The time seems, however, now to be arrived, when it has become expedient to take a review of the position in which the discussion between the two Governments stands ; and by separating those plans of arrangement which have failed, from those which are yet susceptible of being adopted, to disencumber our future communications of all useless matter, and to confine them to such suggestions only as may by possibility lead to a practical result.

"And first with regard to the award of the King of the Netherlands, the two Governments had agreed to refer to that Sovereign, as Arbiter, the decision of the three points of difference ; and they pledged themselves beforehand to abide by the decision which he might pronounce.

"The King of the Netherlands decided absolutely two points out of the three ; and, with respect to the third, while he declared that an absolute decision of that point was impossible, he recommended to the two parties a compromise.

"His Majesty's Government on receiving the award of the King of the Netherlands, announced, without any hesitation, their willingness to abide by that award, if it should be equally accepted by the United States.

“ His Majesty’s Government were of course fully aware that this award was not an absolute decision on all the three points submitted to reference ; they were also quite sensible that in some important matters this award was less favourable to Great Britain than it was to the United States ; but the wish of His Majesty’s Government for a prompt and amicable settlement of this question outweighed the objections to which the award was liable, and for the sake of obtaining such a settlement, they determined to accept the award.

“ But their expectations were not realized. The Senate of the United States refused in July 1832 to subscribe to the award ; and during the three years which have elapsed since that time, although the British Government has more than once declared that it was still ready to abide by its offer to accept the award, the Government of the United States has as often replied that on its part that award could not be agreed to.

“ The British Government must now in its turn declare that it considers itself, by this refusal of the United States, fully and entirely released from the conditional offer which it had made, and you are instructed distinctly to announce to the President, that the British Government withdraws its consent to accept the territorial compromise recommended by the King of the Netherlands.

“ The award being thus disposed of, the next matter to be considered is, the proposal of the Pre-

sident of the United States, that a new survey of the disputed territory should be made by commissioners, to be named in one of two ways suggested by him, and that these commissioners should endeavour, by exploring the country, to trace a boundary line that should be conformable with the Treaty of 1783.

“ With this view the President suggests that, whereas the landmark to be looked for consists of certain highlands described in the Treaty, the commissioners should be authorized to search for those highlands in a north-westerly direction from the head of the St. Croix River, if no such highlands should be found in the due north line from that point.

“ To this His Majesty’s Government replied, that before an exploring commission could be sent out in search of these highlands, it would be necessary that the two Governments, and by consequence their respective commissioners, should be agreed as to the definition by which any given hills were to be identified as being the highlands intended by the Treaty ; that, according to the words of the Treaty these highlands were to be known by the circumstance of their dividing rivers flowing into the St. Lawrence from rivers flowing into the Atlantic ; that with regard to rivers flowing into the St. Lawrence, no doubt could possibly exist as to which those rivers were ; but that with regard to rivers falling into the Atlantic Ocean, a question has been mooted

as to them, and this question is, whether the Bay of Fundy should, for the purposes of the Treaty, be considered as part of the Atlantic, and whether rivers flowing into that bay should be deemed to be Atlantic rivers.

“ His Majesty’s Government stated the reasons which in their opinion render it clear and certain that the Treaty of 1783 establishes a distinction between the Bay of Fundy and the Atlantic Ocean, and therefore excludes from the class of Atlantic rivers, rivers which discharge themselves into that bay.

“ His Majesty’s Government farther quoted, in confirmation of this their opinion, the decision which, as they contend, the King of the Netherlands incidentally gave upon this question in the course of his award ; and they expressed their hope that the Government of the United States would be prepared to agree with them and with the King of the Netherlands on this particular point.

“ It appears, however, by Mr. Forsyth’s note of the 28th April, that this hope has been disappointed, and that the President finds himself unable to admit the distinction drawn in this respect between the Bay of Fundy and the Atlantic Ocean.

“ Under these circumstances, His Majesty’s Government cannot see how any useful result could arise out of the proposed survey ; and it appears to them, on the contrary, that if such survey did not furnish fresh subjects of difference between the

two Governments, it could at best only bring the question back to the same point at which it now stands.

“For it is to be presumed that the Commissioners would begin by exploring the due north line mentioned in the Treaty, and it is obvious that in pursuing that line they could not, until they had crossed over to the northward of the River St. John, find any highlands from which rivers flow into the St. Lawrence, while it is equally clear that after they had crossed over to the northward of the River St. John, they could find no highlands from which any rivers flow into the Atlantic, according to the strict interpretation of the Treaty.

“But they might find, northward of the St. John, highlands separating rivers which flow into the St. Lawrence, from rivers which flow into the Bay of Fundy ; and, in that case, what would the Commissioners have to do ? The American Commissioners would say, they had found the highlands of the Treaty ; the British Commissioners would declare that those were not the highlands which the Treaty describes.

“Would the Commissioners then come back to their respective Governments for that decision on the river question, which ought to have been made before they set out ? or, failing to come to an agreement amongst themselves, while pursuing the due north line, would they at once, and without further reference to their Governments, endeavour

to find to the westward of that line some other highlands, which the two Governments might agree to accept as separating rivers which flow into the St. Lawrence, from rivers which, by the consent of both parties, flow into the Atlantic Ocean?

“His Majesty’s Government have not yet understood that this latter course of proceeding is intended by the President; but if his proposal is to be so interpreted, much of the difficulty attending its execution would undoubtedly be removed.

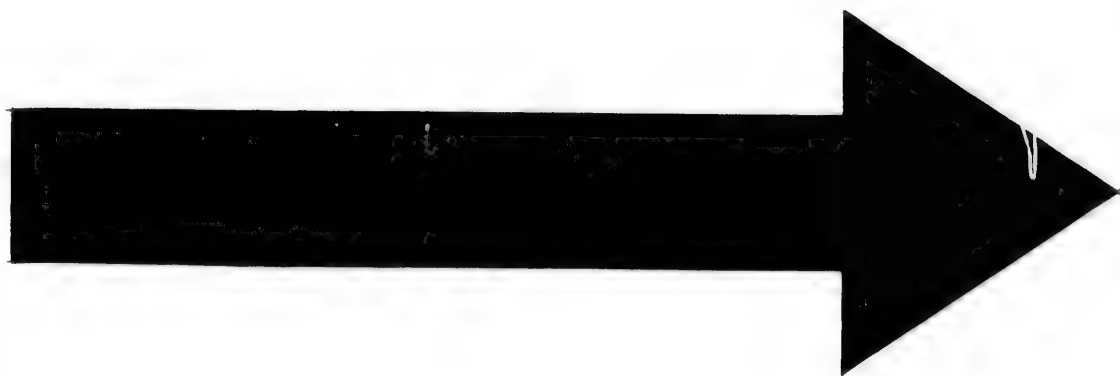
“The President, however, has suggested another way of getting over the embarrassment of the river question; and to this plan His Majesty’s Government regret that it is not in their power to assent. The President suggests, that the commission of survey should be empowered to decide this point of difference. But His Majesty’s Government cannot admit that this point could properly be referred to such a commission. The river question is one which turns upon no local survey, and for the decision of which no farther geographical or topographical information can be required. It turns upon the interpretation to be put upon the words of the Treaty of 1783, and upon the application of that interpretation to geographical facts, already well known and ascertained. A commission of survey therefore has no peculiar competency to decide such a question. But to refer that question to any authority would be to submit it to a fresh arbitration; and if His Majesty’s Government were prepared to

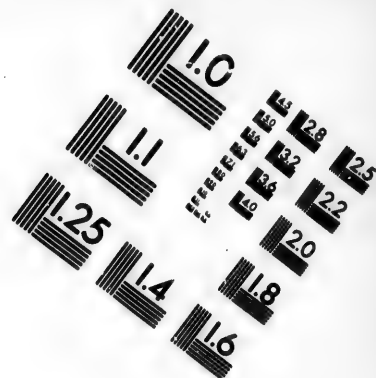
agree to a fresh arbitration, which is by no means the case, such arbitration ought necessarily to include all the points in dispute between the two Governments, and not to be confined to one particular point alone.

“With respect then to the President’s proposal for a commission of exploration and survey, His Majesty’s Government could only agree to such a commission provided there were a previous understanding between the two Governments, that although neither should be required to give up its own interpretation of the river question, yet as the commission of survey would be intended for purposes of conciliation, and with a view of putting an end to discussions on controverted points, the Commissioners should be instructed to search for highlands, upon the character of which no doubt could exist on either side.

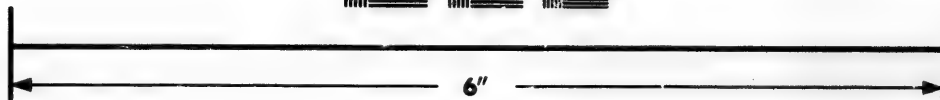
“But if this modification of the President’s proposal should not prove acceptable to the Government of the United States, the only remaining way of arriving at an adjustment of the difference would be to abandon altogether the attempt to draw a line in conformity with the words of the Treaty of 1783; and with a view to the respective interests and convenience of the two parties.

“His Majesty’s Government are perfectly ready to treat for such a line, and they conceive that the natural features of the disputed territory would afford peculiar facilities for drawing it.





A resolution test chart featuring several groups of horizontal and vertical lines of varying thicknesses. Each group is accompanied by a numerical value indicating the resolution. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0, 9.0, and 10.0. The chart is used to measure the resolving power of imaging systems.



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"When a tract of country is claimed by each of two States, and when each party is equally convinced of the justice of its own claim to the whole of the district in question, the fairest way of settling the controversy would seem to be to divide in equal portions between the two claimants the territory in dispute.

"Such a mode of arrangement appears to be consistent with the natural principles of equity.

"His Majesty's Government would therefore propose to that of the United States, to adjust the present difference, by dividing equally between Great Britain and the United States the territory in dispute; allotting to each party that portion which, from contiguity or other circumstances, would be most desirable as a possession for each.

"The general outline of such a division would be, that the boundary between the two states should be drawn as required by the Treaty, due north, from the head of the St. Croix River, and should be carried straight on till it intersected the St. John; from thence it should run up the St. John, to the southernmost source of that river; and from that point it should be drawn to the head of the Connecticut River, in such manner as to make the northern and southern allotments of the divided territory as nearly as possible equal to each other in extent; the northern allotment to remain with Great Britain, the southern allotment to belong to the United States.

"You are therefore instructed to present to Mr. Forsyth a note, of which I enclose you a copy, for the purpose of enabling him to bring distinctly before the Government of the United States, the propositions now made by his Majesty's Government."

"I am, &c.

"(Signed) PALMERSTON."

"*Charles Bankhead, Esq.*"

"&c. &c. &c."

A modification of the proposal of Mr. Livingston was subsequently made by His Majesty's Government, whereby the Commissioners who were to be appointed were not to decide upon the points of difference, but were merely to present to their respective Governments the result of their labours, which it was hoped and believed would pave the way to the ultimate settlement of the question.

Mr. Forsyth objected to the modified proposal of His Majesty's Government as precluding the possibility of the question being terminated during the Presidency of General Jackson, as he knew the President was most anxious to retire from his situation, after having settled every point of difference existing between the United States and Foreign Powers, and especially the question of boundary with Great Britain. On His Majesty's Chargé d'Affaires calling his attention again to this point, he said that he had taken the modified proposition to be nothing more than a civil way of getting rid of

the question of commission altogether. Upon being referred to that part of the note which contained the above modification, and after reading it over attentively, he said that if His Majesty's Government really wished for the formation of a commission of exploration and survey, whose labours were to be afterwards submitted to their respective governments, and whose decisions or opinions were not to be final, he thought that the President would have no objection in acceding to such a proposal.—
(*Correspondence, &c. &c., No. 49.*)

The President, however, did not accede afterwards to the proposal, but requested to be informed more fully of the views of the British Government in offering the modification, so that he might be enabled to judge how the report of the Commission (which, as then proposed to be constituted, was not to decide upon points of difference), when it should have been rendered, was likely to lead to an ultimate settlement of the question of boundary, between the two Governments.

The instructions on this head from Her Majesty's principal Secretary of State for Foreign Affairs, to her Minister at Washington, are as follows:—

“ Her Majesty's Government have little expectation that such a commission could lead to any useful result, and on that account would be disposed to object to the measure. But at the same time they

are so unwilling to reject the only plan now left, which seems to afford a chance of making any further advance in this long-pending matter, that they would not withhold their consent to such a commission, if the principle upon which it was to be formed, and the manner in which it was to proceed, could be satisfactorily settled.

"The United States' Government have proposed two modes in which such a commission might be constituted ; first, that it might consist of commissioners named in equal numbers by each of the two Governments, with an umpire, to be selected by some friendly European Power ; secondly, that it might be entirely composed of scientific Europeans, to be selected by a friendly Sovereign ; and might be accompanied in its operations by agents of the two different parties, in order that such agents might give to the commissioners assistance and information.

"If such a commission were to be appointed, Her Majesty's Government think that the first of these two modes of constructing it would be the best, and that it should consist of members chosen in equal numbers by each of the two Governments. It might, however, be better that the umpire should be selected by the members of the commission themselves, rather than that the two Governments should apply to a third Power to make such a choice.

"The object of this commission, as understood

by Her Majesty's Government, would be to explore the disputed territory, in order to find within its limits, dividing highlands, which may answer the description of the Treaty ; the search being first to be made in the due north line, from the monument at the head of the St. Croix ; and if no such highlands should be found in that meridian, the search to be then continued to the westward thereof ; and Her Majesty's Government have stated their opinion, that in order to avoid all fruitless disputes, as to the character of such highlands, the commissioners should be instructed to look for highlands which both parties might acknowledge as fulfilling the conditions required by the Treaty.

" Mr. Forsyth, in his note of the 5th March, 1836, expresses a wish to know how the report of the commission would, according to the views of Her Majesty's Government, be likely, when rendered, to lead to an ultimate settlement of the question of boundary between the two Governments.

" In reply to this enquiry Her Majesty's Government would beg to observe, that the proposal to appoint a commission originated not with them, but with the Government of the United States ; and that it is therefore rather for the Government of the United States than for that of Great Britain, to answer this question.

" Her Majesty's Government have themselves already stated that they have little expectation that such a commission could lead to any useful result,

and that they would on that account be disposed to object to it; and if Her Majesty's Government were now to agree to appoint such a commission, it would be only in compliance with the desire so strongly expressed by the Government of the United States, and in spite of doubts which Her Majesty's Government still continue to entertain of the efficacy of the measure.

"But with respect to the way in which the report of the commission might be likely to lead to an ultimate settlement of the question, Her Majesty's Government, in the first place, conceive that it was meant by the Government of the United States, that if the commission should discover highlands answering to the description of the Treaty, a connecting line drawn from those highlands to the head of the St. Croix, should be deemed to be a portion of the boundary line between the two countries.

"But Her Majesty's Government would further beg to refer Mr. Forsyth to the notes of Mr. McLane of the 5th June, 1833, and of the 11th and 28th March, 1834, on this subject; in which it will be seen that the Government of the United States appears to have contemplated as one of the possible results of the proposed commission of exploration, that such additional information might possibly be obtained respecting the features of the country in the district to which the Treaty relates, as might remove all doubt as to the impracticability of

laying down a boundary in strict accordance with the letter of the Treaty.

"And if the investigations of the proposed commission should show that there is no reasonable prospect of finding a line strictly conformable with the description contained in the Treaty of 1783, the constitutional difficulties which now prevent the United States from agreeing to a conventional line may possibly be removed, and the way may thus be prepared for the satisfactory settlement of the difference by an equitable division of the disputed territory.

"But if the two Governments should agree to the appointment of such a commission, it would be necessary that their agreement should be first recorded in a Convention, and it would obviously be indispensable that the State of Maine should be an assenting party to the arrangement."

These instructions were communicated to the American Government, on the 10th of January, 1838.

On the 27th of April, 1838, the Honourable John Forsyth, the Secretary of State of the United States, transmitted to Her Majesty's Minister at Washington the following note :—

" Department of State,

" Washington, April 27th, 1838.

" The undersigned, Secretary of State of the

United States, has the honour, by the direction of the President, to communicate to Mr Fox, Her Britannic Majesty's Envoy Extraordinary, and Minister Plenipotentiary, the result of the application of the General Government to the State of Maine on the subject of the North-eastern Boundary Line, and the resolution which the President has formed upon a careful consideration thereof. By the accompanying papers, received from the Executive of Maine, Mr. Fox will perceive that Maine declines to give a consent to the negotiation for a conventional boundary; is disinclined to the reference of the points in dispute to a new arbitration; but is yet firmly persuaded that the line described in the Treaty of 1783 can be found and traced whenever the Governments of the United States and Great Britain shall proceed to make the requisite investigations, with a predisposition to effect that very desirable object. Confidently relying, as the President does, upon the assurances frequently repeated by the British Government of the earnest desire to reach that result, if it is practicable, he has instructed the undersigned to announce to Mr. Fox the willingness of this Government to enter into an arrangement with Great Britain for the establishment of a joint commission of survey and exploration upon the basis of the original proposition, and the modifications offered by Her Majesty's Government.

"The Secretary of State is therefore authorized to invite Mr. Fox to a conference upon the subject

at as early a day as his convenience will permit ; and the undersigned will be immediately furnished with a requisite full power, by the President, to conclude a convention embracing that object, if Her Majesty's Minister is duly empowered to proceed to the negotiation of it on the part of Great Britain.

" The undersigned avails himself of this occasion to renew to Mr. Fox the expression of his distinguished consideration.

" JOHN FORSYTH.

" *Henry S. Fox, Esq. &c. &c.*"

To this Note the following answer was transmitted by Mr. Fox :—

" Washington May 1st, 1838.

" SIR,—I have the honour to acknowledge the receipt of your official note of the 26th ultimo, in which you enclose to me a communication received by the Federal Government from the Executive of Maine, upon the subject of the North-eastern Boundary line; and in which you inform me that the President is willing to enter into an arrangement with Her Majesty's Government for the establishment of a joint commission of survey and exploration, upon the basis of the original American proposition, and of the modification offered by Her Majesty's Government, as communicated to you in my note of the 10th of January last ; and you invite me to a

conference, for the purpose of negotiating a convention that shall embrace the above object, if I am duly empowered by my Government to proceed to such negotiation.

"I have the honour to state to you, in reply, that my actual instructions were fulfilled by the delivery of the communication which I addressed to you on the 10th of January; and that I am not at present provided with full powers for negotiating the proposed convention. I will forthwith, however, transmit to Her Majesty's Government the note which I have had the honour to receive from you; in order that such fresh instructions may be furnished to me, or such other steps taken, as the present situation of the question may appear to Her Majesty's Government to require. I avail myself of this occasion to renew to you the assurances of my high respect and consideration.

" H. S. FOX.

" *The Hon, John Forsyth, &c.*"

This is the last act on the part of either Government relating to this matter, which has been rendered public.

CONCLUSION.

THUS, after more than half a century from the period of the making of the Treaty of 1783, the greatest portion of which time has been occupied in unavailing negotiations, the two nations are brought back to the point from which they originally set out. If the facts and reasonings contained in the foregoing paper be true, then the highlands described in the Treaty of 1783 ought to be sought for, and will be found, at the extremity of a line run due north from the source of the St. Croix—that is, from the head spring of its westernmost waters. A cause abundantly adequate to account for the impossibility of adapting the terms of the Treaty to any line proceeding from the head of the Cheputnaticook is found in the fact that the source of the Cheputnaticook is not the source of the St. Croix, and is distant from the source of the St. Croix fifteen or twenty miles in latitude, about forty

miles in longitude, and is to the north-east of the source of the St. Croix and of the dividing ridge, and below that ridge. The compromise whereby the source of the Cheputnaticook was substituted in place of the source of the St. Croix, operated possibly a surrender of the territory to the southward of the meridian of latitude of the source of the Cheputnaticook, but had no further effect. And the boundary then will in point of fact be found to be from the mouth of the St. Croix to the point of confluence of the St. Croix and the Cheputnaticook, thence up the Cheputnaticook to its most easternmost source, thence by the shortest and most direct line to the highlands which divide the rivers which empty themselves into the Atlantic Ocean from those which empty themselves into the River St. Lawrence, to the north-westernmost head of the Connecticut River. These conclusions, so far from being impaired, are corroborated by the statements made by the American Negotiators in relation to the proposal of Mr. Livingston, and by the proposal itself, which statements on that account have been given with so much detail in the previous number of this paper.

If the views which have been herein attempted to be developed be found to be correct, the subjects and citizens of the two countries may look forward to a speedy adjustment of this matter, and to an end being put to one of the few questions which

divide two nations whose interest it will always be to cultivate the relations of amity, and a cordial good understanding with each other.

A. STUART.

Tavistock Hotel, London.

14th July, 1838.

APPENDIX.

A.

CHARLES, &c.—To all Persons to whom these presents shall come, greeting:—

“ WHEREAS, by the Treaty of Peace concluded at Breda, the
“ 31st of July last past, between our Ambassador and those of
“ our good Brother, the Most Christian King, it is among other
“ things agreed, that we shall restore to the said King, or unto
“ such as shall receive for that purpose his commission, duly
“ passed under the Great Seal of France, the country which is
“ called Acadie, lying in North America, which the said Most
“ Christian King did formerly enjoy, and to that end that we
“ should immediately, upon the ratification of the agreement, de-
“ liver or cause to be delivered unto the said Most Christian
“ King, or such ministers of his as should be thereunto ap-
“ pointed, all instruments and orders duly dispatched, which
“ should be necessary to the said ratification; as also in like
“ manner, that we should restore unto the said Most Christian
“ King, all islands, countries, forts, and colonies, any where
“ situated, which might have been gotten by our arms, before or
“ after the subscription of the said treaty, and which the said
“ Most Christian King possessed before the 1st of January, in
“ the year 1665, on condition that he, the said Most Christian
“ King, should, with all speed, or at the farthest within six
“ months, to be reckoned from the day of subscribing that agree-
“ ment, restore unto us, or unto such as for that purpose should
“ receive our commands, duly passed under our great seal of
“ England, that part of the island of St. Christopher's which the
“ English possessed the First of January, 1665, before the decla-
“ ration of the late war; and should to that end, immediately
“ upon the ratification of the said agreement, deliver or cause to
“ be delivered unto us, or such of our ministers as should be
“ thereunto appointed, all necessary instruments and orders; as
“ also that he, the said Most Christian King, should, in like
“ manner, restore unto us, the islands called Antigua and Mont-
“ serrat, if they were in his power; and all other islands, coun-
“ tries, forts, and colonies, which might have been gotten by the

“arms of the said Most Christian King, before or after the sub-
 “scription of the said treaty, and which we possessed before we
 “entered into the war with the States General (to which war
 “that treaty puts an end), as appears by the several articles of the
 “said treaty, which are as follows:—Articles VII., VIII., IX.,
 “X., XI., XII., XIII., XIV., and XV. And we, desiring on
 “our part, sincerely and truly, without all delay or difficulty,
 “under what pretence or colour soever, to accomplish and ob-
 “serve the said treaty, and every article, clause, and part
 “thereof, and more particularly what concerns the restitution
 “and delivery of the said islands, countries, castles, and colo-
 “nies, which our meaning and intention is, they shall be forth-
 “with delivered to our said good Brother as aforesaid, or such
 “as shall be thereto by him sufficiently empowered and ap-
 “pointed; know ye that we for these and several good consider-
 “ations, us thereunto especially moving, have given, granted,
 “quitted, transferred, surrendered, and delivered, and by these
 “presents signed with our royal signature, do for us, our heirs
 “and successors for ever, grant, quit, transfer, surrender, and
 “deliver all that country called Acadie, lying in North America,
 “which the said Most Christian King did formerly enjoy, as
 “namely, the forts and habitations of Pentagoet, St. John, Port
 “Royal, La Have, and Cap de Sable, which his subjects en-
 “joyed under his authority, till the English possessed themselves
 “of them in the years 1654 and 1655, and since; as also, the
 “country of Cayenne in America, with all and singular the forts
 “and places thereto and to them, or any of them, belonging;
 “and all and every the islands, countries, castles, forts, and
 “colonies, which were in the possession of our said good Bro-
 “ther before the declaration of the war with the united pro-
 “vinces of the lower countries, and which have been taken from
 “him, or his subjects, by our forces, before or since the signing
 “of the said treaty, with all the right, powers, privileges, so-
 “vereignty, jurisdiction, pre-eminence, and authority, that doth
 “or might belong to us, within the same and every of them, to
 “be and remain to him, the said Most Christian King, his heirs
 “and successors for ever, with the same and like power, autho-
 “rity, and sovereignty as they would, or might, have done to
 “us, our heirs and successors. Whereas, we therefore have, and
 “by these presents do, from this time forward and for ever, dis-
 “seize and dispossess ourself in favour of our said good Bro-
 “ther, his heirs and successors; and, accordingly, him and them
 “have, by these presents do seize and possess all the same, and
 “of every part and parcel thereof, in pursuance of our said
 “treaty, and of the respective articles thereof, without ex-
 “emption, limitation, or exception whatsoever, and for the full
 “and effectual execution thereof our will and pleasure is, and
 “we do hereby strictly charge and require, as well our Captain

"General and Governor-in-Chief of our Caribbee islands, our
 "Governor of our country of Nova Scotia for the time being, as
 "the several Governors, Captains, Commanders-in-Chief of the
 "said country of Acadie, la Cayenne, and of others, the said
 "islands, countries, castles, forts, and colonies respectively,
 "that forthwith, and by virtue hereof, without all difficulty
 "or delay, they surrender and give up into the hands of our
 "said good Brother, or to such as he shall thereto appoint,
 "as aforesaid, the said countries, islands, castles, forts, and
 "colonies, and every of them; withdrawing such of our gar-
 "risons and forces as shall have been placed there for our
 "service: and for this end, we have freed, acquitted, and
 "discharged, and by these presents do for us, our heirs and
 "successors, free, acquit, and discharge our said Captain General,
 "the several Governors, Captains, Commanders, of all and
 "singular islands respectively, of and from the charge, com-
 "mand, and government of the same, and all such as are
 "employed by them therein, or in any of them, so as not to
 "be at any time hereafter chargeable, answerable, or account-
 "able to us, our heirs or successors, for or concerning any
 "matter or thing they shall do by virtue of these presents.
 "Whereas, we will that all and singular, our inferior officers,
 "civil and military, our soldiers, people, and subjects, of our
 "said islands, countries, castles, and forts, whom it may concern,
 "and every of them, do take due notice and be obedient,
 "accordingly, to such orders and directions as shall be given
 "to every of them by our said Captain General, our Governors,
 "Captains, and Commanders respectively, in the due and punc-
 "tual execution of these presents, without delay or difficulty,
 "or obstruction whatsoever; and for which this shall be to
 "them and every of them, and to all others whom it may
 "concern, against us, our heirs and successors, a full and
 "sufficient warrant and discharge in this behalf. In witness
 "whereof we have caused our Seal of England to be put to these
 "presents. Given, &c.
 "17th February, 1667-8."

B.

MITCHELL'S MAP.

The expression so frequently used in the American State
 Papers upon the boundary question, respecting Mitchell's Map,
 to wit, that "*it was before the Commissioners who framed
 the Treaty of 1783,*" is one which appears to be calculated to
 convey very erroneous notions.

It is true that Mitchell's Map was before the commissioners, but this is not the whole truth,—so also were various other maps.

The matter in negociation at the Treaty of 1783, involved the question, what was the extent of territory acquired in this quarter, by the Cession of Canada contained in the Treaty of 1763.

Mitchell's Map, if I recollect rightly, was compiled from reports made to the Colonial Office, by the Governors of the different colonies, concerning the limits of their several governments, under the superintendence of Governor Pownall, whose signature will be found to it. It was published about the year 1755, and of course at a time when views of territorial aggrandizement, as stated in the text, were rife upon this continent.

Not only the Map called Mitchell's Map, but also the various maps and charts which had been adverted to in the controversy between the English and French Commissioners in 1751-2, must have been before the Commissioners who framed the Treaty of 1783.

The negociators of that treaty on both sides well knew the character of Mitchell's Map, and if Franklin could raise his head from the grave, he would smile at the importance which the American commissioner and government now affect to give to it.

But after all the words of the treaty are to be looked at,—from these alone can we know the mind of the framers of it. What effect Mitchell's Map may have had upon their minds, it is impossible to conjecture; and, if it could be known, it would be entirely useless.

C.

Early titles to lands on the River St. John from the French Government.

It will be seen from the following documents that the possession of the River St. John by the Crown of France (in whose place Great Britain now stands) is of very old date.

“ La Compagnie de la Nouvelle France; A tous ceux qui ces présentes lettres veront; Salut: Le désir que nous avons d'apporter toute diligence possible à l'établissement de la Colonie de la Nouvelle France, nous faisant rechercher ceux qui ont la volonté d'y contribuer de leur part, et l'obligation que nous avons de recompenser, par toutes voies, les travaux de ceux qui nous assistent, et d'embrasser les occasions de

" leur témoigner par effets, étant bien informés des bonnes
 " inclinations que M. le Commandeur de Razilly, Lieutenant
 " Général pour le Roi en la Nouvelle France, a toujours eu
 " pour faire réussir cette entreprise, et desirant l'en reconnoître
 " par les gratifications à nous possibles ; A ces causes, avons audit
 " sieur de Razilly donné et octroyé, donnons et octroyons par
 " ces présentes, l'étendue des terres et pays qui ensuivent ; *a*
 " *savoir la rivière et baie Sainte-Croix, isles y contenues, et*
 " *terres adjacentes d'une part et d'autre en la Nouvelle*
 " *France*, de l'étendue de douze lieues de largo, à prendre le
 " point milieu en l'isle Sainte-Croix, ou le sieur de Mons a
 " hiverné, et vingt lieues de profondeur depuis le port aux Coquil-
 " les, qui est en l'une des isles de l'entrée de la rivière et baie Sainte-
 " Croix, chaque lieue de quatre mille toises de long. Pour jouir
 " des dits lieux par le dit sieur de Razilly, ses successeurs et
 " ayans cause, en toute propriété, justice et seigneurie a per-
 " pétuité, tout et ainsi et à pareils droits qu'il a peù au Roi
 " donner le pays de la Nouvelle France à la Compagnie ; à la
 " réserve de *la foi et hommage* que le dit sieur Commandeur,
 " ses successeurs et ayans cause, seront tenus porter *au fort*
 " *Saint Louis à Québec*, ou autre lieu qui sera destiné par la
 " dite Compagnie, par un seul hommage lige à chaque mutation
 " de possesseur des dits lieux, avec une maille d'or du poids
 " d'une once, et le revenu d'une année de ce que le dit sieur
 " Commandeur se sera réservé après avoir donné en fief ou à
 " cens et rente, tout ou partie des dits lieux ; que les appellations
 " du juge qui sera établi esdits lieux par le dit sieur de Razilly
 " ressortiront nument à la cour et justice souveraine qui sera ci
 " après établie au Sault Saint-Louis ou ailleurs ; que les hommes
 " que le dit sieur Commandeur fera passer *en la Nouvelle*
 " *France* tourneront à la decharge et diminution du nombre de
 " ceux que la Compagnie doit faire passer, sans que le dit sieur
 " Commandeur ou les siens puissent traiter des peaux et pellete-
 " ries qu'aux conditions portées par l'édit de l'établissement de la
 " Compagnie de la Nouvelle France ; et en cas que le dit sieur
 " Commandeur désire faire porter à cette étendue de terre quelque
 " nom et titre plus honorable, se retirera vers le Roi et Mon-
 " seigneur le cardinal de Richelieu, Grand Maître, Chef et
 " Surintendant General de la navigation et commerce de France
 " pour lui être pourvû conformément aux articles accordés à la
 " dite Compagnie. En témoins de quoi nous avons signé ces
 " présentes. A Paris, au Bureau de la Nouvelle France, le dix
 " neuvième Mai, mil six cent trente deux *Signé* Lami avec
 " paraphe, Secrétaire.
 " Louis de Buade, Comte de Frontenac, Conseiller du Roi en
 " ses Conseils, Gouverneur et Lieutenant-Général pour sa Ma-
 " jesté en Canada, Acadie, Isle de Terre Neuve, et autre pays de
 " la France septentrionale : A tous ceux que ces presentes let-

" tres veront : Salut. Savoir faisons que vù la requête à nous
 " présentée par le sieur Pierre de Joibert, Ecuyer, sieur de Sou-
 " lange et de Marson Major de Pentagoet, et Commandant des
 " forts de Gemisik et de la rivière de Saint Jean à ce qu'il nous
 " plût lui accorder entitre de fief, seigneurie, haute, moyenne et
 " basse justice, le lieu appelé *Nachouac*, et que l'on appellera à
 " l'avenir *Soulange* sur la dite rivière de Saint Jean, à quinze
 " lieues du dit Gemisik, contenant deux lieues de front de chaque
 " côté sur la dite rivière et deux lieues de profondeur dans les
 " terres, aussi de chacun côté, ensemble les isles et islets qui sont
 " dans la dite rivière au devant des dites lieues de front ; requé-
 " rant cette quantité, attendu le peu de bonnes terres labourables
 " qui s'y trouvent. Nous, en vertu du pouvoir à nous donné
 " par Sa Majesté, conjointement avec M. Duchesneau, Conseil-
 " ler du Roi en ses Conseils, et Intendant de la justice, police et
 " finance de ce pays, et en considération des services que le dit
 " sieur de Marson y a rendus, et désirant l'engager à les y con-
 " tinuer, avons au dit sieur de Marson accordé donné et con-
 " cédé, donnons, accordons et concedons par ces présentes, le
 " dit lieu appelé *Nachouac*, que l'on appellera à l'avenir *Sou-
 " lange*, sur la dite rivière de Saint Jean, contenant deux lieues
 " de front de chaque côté de la dite rivière, et deux lieues de pro-
 " fondeur dans les terres, aussi de chaque côté, ensemble les
 " isles et islets qui sont dans la dite rivière au devant des dites
 " deux lieues de front, pour, du tout, jouir par lui, ses hoirs et
 " ayans cause, en fief, seigneurie, haute, moyenne et basse jus-
 " tice, avec le droit de chasse et de pêche dans l'étendue des dits
 " lieux, à la charge de la *foi et hommage*, que le dit sieur de
 " Marson, ses dits hoirs et ayans cause, seront *tenus de porter
 " au Château Saint Louis de cette ville de Québec, du quel il
 " relevera* au droits et redevances accoutumes, et au désir de la
 " coutume de la Prevôté et Vicomté de Paris qui sera suivie
 " pour cet égard par provision, et en attendant qu'il en soit au-
 " trement ordonné par Sa Majesté ; et que les appellations du juge
 " qui pourra être établi au dit lieu, ressortiront par devant nous.
 " Et à la charge qu'il rendra et fera tenir feu et lieu par ses te-
 " nanciers, sur les concessions qu'il leur accordera : et à faute de
 " ce faire, qu'il rentrera de plein droit en possession de la dite
 " terre ; et conservera le dit sieur de Marson, et fera conserver
 " par ses tenanciers, les bois de chêne qui se trouveront propres
 " pour la construction des vaisseaux, dans l'étendue des dits
 " lieux ; et qu'il donnera incessamment avis au Roi et à nous,
 " des mines, minières et minéraux, si aucuns se trouvent, et y
 " laissera et fera laisser tous chemins et passages necessaires ; le
 " tout sous le bon plaisir de Sa Majesté, de laquelle il sera tenu
 " de prendre la confirmation des présentes dans un an. En
 " témoins de quoi nous avons signé ces présentes, à icelles fait
 " apposer le sceau de nos armes, et contresigner par l'un de nos

“ Secretaires. Donne à Quebec, le douzième Octobre, mill six
 “ cent soixante-seize; *ainsi signé à l'original Frontenac, scellé*
 “ à côté au sceau des armes a. dit Seigneur *et contre signé*
 “ *plus bas*, par Monseigneur. Le Chasseur, avec paraphe. *Et*
 “ *ensuite est écrit.*

“ Le titre de concession ci-dessus, à été confirmé par arrêt du
 “ Conseil d'état du Roi, du 29 Mai, 1680, et enregistré au greffe du
 “ Conseil souverain à Quebec, suivant le dit arrêt du Conseil
 “ d'état, et celui du dit Conseil souverain, du 24 Octobre au dit
 “ an, par moi, Greffier en chief au dit Conseil, soussigné. Ainsi
 “ signé Peuvret avec paraphe.”

“ Louis de Buade, Comte de Frontenac, Conseiller du Roi en
 “ ses Conseils, Gouverneur et Lieutenant-Général pour Sa Ma-
 “ jesté en Canada, Acadie, Isle de Terre neuve et autres pays de
 “ la France septentrionale : A tous ceux que ces présentes lettres
 “ verront : Salut. Savoir faisons que sur la requête à nous pré-
 “ sentée par Pierre de Joibert Ecuyer, sieur de Soulange et de
 “ Marson, Major de Pentagoet, et Commandant des forts de Ge-
 “ misik et de la rivière de Saint Jean contenant que depuis
 “ quatre années qu'il a l'honneur de commander sous nos ordres
 “ dans les dits forts, il a fait diverses réparations et augmenta-
 “ tions à celui de Gemisik, a fin de le rendre logeable et de dé-
 “ fense, n'y ayant auparavant qu'un petit logement de bois tout
 “ ruiné, entouré seulement de quelques palissades à demi tom-
 “ bées par terre; en sorte que pour re-édifier le tout, il lui
 “ auroit coûté beaucoup, et se verroit encore contraint d'y faire
 “ de grandes dépenses pour le remettre en état, à cause de la
 “ ruine entiere qu'en ont fait les Hollandois en le faisant prison-
 “ nier dans le dit fort, il y a deux ans, et lui en levant générale-
 “ ment tout ce qu'il y avoit; ce qui ne seroit pas juste, s'il
 “ n'étoit assuré d'obtenir l'effet des promesses de M. Talon, ci-
 “ devant Intendant de la justice, police et finance de ce pays,
 “ lequel lui en avoit fait espérer la propriété; c'est pourquoi il
 “ requéroit qu'il nous plût lui accorder pour son remboursement
 “ la propriété du fort ou maison de Gemisik, avec une lieue de
 “ chaque côté du dit, fort, faisant deux lieues de front, la de-
 “ vantage de la rivière, et les isles et isle's qui y sont, et deux
 “ lieues de profondeur dans les terres avec le droit de chasse et
 “ de pêche dans l'étendue des dits lieux: le tout en fief seig-
 “ neurie, haute, moyenne et basse justice; duquel fort M. Talon,
 “ lors Intendant de la justice, police et finance de ce pays, lui
 “ auroit promis la propriété, attendu les dépenses et voyages
 “ qu'il avoit faits dans le pays pour le service de sa Majesté, peu
 “ auparavant notre arrivée dans ce gouvernement. Nous en vertu
 “ du pouvoir à nous donne par Sa Majesté, conjointement avec
 “ M. Duchesneau, Conseiller du Roi en ses Conseils, et Intend-
 “ ant de justice, police et finance de ce pays, et en considération
 “ des services que le dit sieur de Marson y a rendus et de la dé-

" pense qu'il a faite pour l'entretien et augmentation du dit fort
 " Gemisik de la perte qu'il a soufferte, il y a deux ans lorsqu'il
 " fut pris et pillé par les Hollandois; et pour aucunement le dé-
 " dommager et l'engager de continuer ses services, avons, au dit
 " sieur de Marson, donné, octroyé, concédé, donnons, octroyons
 " et concedons par ces presentes, le dit fort de Gemisik, avec une
 " lieue de chaque côté du dit fort, faisant deux lieues de front, la
 " devanture de la rivière, et les isles et islets qui y sont, et
 " deux lieues de profondeur dans les terres, avec le droit de
 " chasse et de pêche dans l'estendue des dits lieux; pour du tout,
 " jouir par lui en pleine propriété, ses hoirs et ayans cause, en
 " fief et seigneurie, haute, moyenne et basse justice; à la charge
 " de la foi et hommage que le dit sieur de Marson, ses dits
 " hoirs et ayans cause seront tenus de porter au *Château Saint*
 " *Louis de cette ville de Quebec, duquel il relevera* aux droits
 " et redevances accoutumés et au desir de la coutume de la
 " Prevôté et Vicomté de Paris, qui sera suivie pour cet égard
 " par provision, et en attendant qu'il en soit autrement ordonné
 " par Sa Majesté; et que les appellations du juge qui pourra être
 " établi au dit lui, ressortiront par devant nous. A la charge qu'il
 " tiendra et fera tenir feu et lieu par ses tenanciers, sur les con-
 " cessions qu'il leur accordera; et a faute de ce faire, qu'il
 " rentrera de plein droit en possession de la dite terre. et con-
 " servera le dit sieur de Marson, et fera conserva par ces tenan-
 " ciers, les bois de chêne qui se trouveront propres pour la con-
 " struction des vaisseaux, dans l'estendue des dits lieux; et qu'il
 " donnera incessamment avis au Roi à nous, des mines, mi-
 " nières ou minéraux, si aucuns s'y trouvent, et qu'il laissera et
 " fera laisser tous chemins et passages nécessaires: le tout sous
 " le bon plaisir de Sa Majesté, de laquelle il sera tenu de prendre,
 " la confirmation des présentes dans un an. En témoin de quoi
 " nous avons signé ces présentes, à icelles fait apposer le sceau
 " de nos armes, et contre-signer par l'un de nos Secrétaires.
 " Donné à Québec, le seizième Octobre mil six cent soixante-
 " seize; ainsi signé à l'original en parchemin, Frontenac, et
 " contre-signé plus bas, par Monseigneur, Le Chasseur, avec
 " paraphe. Et au dos du dit titre est écrit.

" Le titre de concession de l'autre part, a été confirmé par
 " arrêt du Conseil d'Etat du Roi, du 29 Mai, 1680, et enregistré au
 " greffe du Conseil souverain à Québec, suivant le dit arrêt du
 " Conseil d'Etat et celui du dit Conseil souverain, du vingt-
 " quatrième Octobre au dit an, par moi Greffier en Chef au dit
 " Conseil, Soussigné Ainsi signé Peuvret, avec paraphe."

" Les sieurs le Febvre de la Barre, Seigneur du dit lieu Con-
 " seiller, du Roi en ses Conseils Gouverneur et son Lieutenant-
 " General dans toutes les terres de la Nouvelle France; et de
 " Meules, Chevalier, Seigneur de la Source, Conseiller du Roi en
 " ses Conseils, Intendant de justice police et finance en Canada,

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" et pays de la dite France Septentrionale. A tous ceux que ces
 " présentes lettres verront, Salut. Savoir, faisons que sur la re-
 " quête a nous présentée par René d'Amours, Ecuyer, sieur de
 " Clignancourt, à ce qui nous plût lui vouloir accorder en titre
 " de fief, seigneurie et justice, haute, moyenne et basse, ce qui
 " se rencontre de terre non concédée le long de la Rivière de
 " Saint Jean, depuis le lieu de Madoctet, icelui compris, jusqu'
 " au long sault qui se trouve en remontant la dite rivière de St.
 " Jean, icelle comprise, avec les isles et islets qui se trouveront
 " dans cet-espace et deux lieues de profondeur de chaque côté
 " de la dite rivière de St. Jean. Nous, en vertu du pouvoir à
 " nous conjointement donné par Sa Majesté, avons donné, ac-
 " cordé, concédé, donnons, accordons et concédons par ces pré-
 " sentes au dit Sieur de Clignancourt, ce qui se rencontre de
 " terre non concédée ni habitée le long de la dite rivière de St.
 " Jean, depuis le dit lieu de Madoctet, icelui compris, jusqu' au
 " long sault qui se trouve en remontant la dite rivière de St.
 " Jean, icelle comprise avec les isles et islets qui se rencontre-
 " ront dans cet espace, et deux lieues de profondeur de chaque
 " côté de la dite rivière de St. Jean; pour jouir de la dite
 " étendue de terre et de tout ce qui s'y pourra rencontrer, par
 " le dit sieur de Clignancourt, ses hoirs et ayans cause, à perpé-
 " tuité en titre de fief, seigneurie, haute, moyenne et basse jus-
 " tice, en faire et disposer comme de chose à lui appartenante;
 " lequel fief et seigneurie portera le non de Clignancourt, à la
 " charge de la *foi et hommage* que le dit sieur de Clignancourt,
 " ses dits hoirs et ayans cause, seront tenus porter à Sa Majesté
 " *au chateau de St. Louis de cette ville*, duquel il relevera aux
 " droits et redevances ordinaires, suivant la coutume de la Pre-
 " vôté et Vicompté de Paris suivie en ce pays; qu'il tiendra ou
 " fera tenir feu et lieu, et y obligera les particuliers à qui il ac-
 " cordera des terres, et qu'à faute de ce faire par eux, il rentrera
 " de plein droit en la possession d'icelles; qu'il ne souffrira la
 " dite rivière de St. Jean être embarrassée, afin que la navigation
 " y soit libre, qu'il conservera et fera conserver les bois de Chêne
 " qui s'y trouveront propres pour la construction des vaisseaux;
 " donnera avis à Sa Majesté et à nous, des mines, minières et
 " minéraux, si aucuns s'y trouvent, laissera et fera laisser et
 " tenir en bon état les chemins et passages nécessaires, et qu'il
 " fera defricher et habituer les dits lieux, et les garnira de bâti-
 " mens et de bestiaux dans deux ans de ce jour, autrement la
 " presente concession demeurera nulle et de nue effet; le tout
 " sous le bon plaisir de Sa Majesté, de laquelle il sera tenu de
 " prendre confirmation d'icelle dans deux ans. En foi de quoi
 " nous avons signé ces présentes, à icelles fait apposer le sceau
 " de nos armes et contre signer par le Secrétaire de nous dit In-
 " tendant. Donné à Québec le vingt Septembre mil six cent
 " quatre vingt quatre. *Signé* Le Febvre de La Barre et de
 " Meules. *Et plus bas*, par Monseigneur Peuvret. Et scellé.

" Collationné à l'original en parchemin à moi représenté et à l'instant rendu par moi Conseiller. Secrétaire du Roi et Greffier en chef du Conseil souverain de la Nouvelle France. A Québec le vingt troisieme Septembre mil six cent quatre vingt quatre. *Signé* Peuvret."

" A tous ceux qui ces présentes lettres veront; Salut. Savoir faisons que sur la requête à nous présentée par l'ierre Chesnet, Ecuyer, sieur du Breuil, tendante à ce qu'il nous plût lui accorder en propriété deux lieues de front lelong de la Rivière Saint Jean, dans le lieu appelé par les Sauvages Cannibecachiche et petit Nachouac faisant le milieu de sa concession, avec les isles et islets qui se trouveront au devant, et trois lieues de profondeur, ensemble le droit de traite avec les Sauvages, de chasse, de pêche dans la dite étendue, et le tout tenir en fief, seigneurie, haute, basse et moyenne justice. Nous, en conséquence du pouvoir à nous donné par Sa Majesté, avons audit sieur du Breuil accordé et concédé, accordons et concédons à perpétuité, deux lieues de front le long de la rivière de Saint Jean, dans le lieu appelé par les Sauvages Canibecachiche et petit Nachouac, savoir, une lieue d'un côté, et une de l'autre, le dit petit Nachouac, faisant le milieu de la dite concession, avec les isles et islets qui se trouveront au devant, et trois lieues de profondeur, ensemble le droit de traite avec les Sauvages, de chasse et de pêche dans la dite étendue; pour, par lui, ses hoirs et ayans cause, en jouir à perpétuité, à titre de fief et seigneurie, avec haute, moyenne et basse justice, et droit de chasse et de pêche dans toute l'étendue de la dite concession; à la charge de rendre la *foi et hommage au château de St. Louis de Québec* et de payer les droits ordinaires à chaque mutation le tout suivant la coutume de Paris; de conserver et faire conserver par ses tenanciers, les bois de chêne qui se trouveront dans toute l'étendue de la dite concession, propres pour la construction des vaisseaux; et de donner avec des mines, minières et minéraux, à Sa Majesté ou au Gouverneur du pays, si aucuns se trouvent; de faire insérer pareille condition dans les concessions qu'il lui sera permis d'accorder sur la dite terre, et de commencer dans trois ans de ce jour, à travailler pour habiter la dite terre, à peine d'être déchu de la possession d'icelle. En t'émoi de quoi nous avons signé ces présentes, à icelles fait apposer le sceau de nos armes, et contre signer par l'un de nos secrétaires. Fait à Québec, ce septième Janvier, mil six cent quatre-vingt neuf. *Signé* J. R. De Brisay De Denonville, J. Rochart Champigny. Et plus bas, par Monseigneur, De Fredin.

" Collationé à l'original en papier, par moi Notaire Soussigné, ce vingt-huitieme Septembre mil six cent quatre-vingt dix-neuf, et à l'instant rendu. *Signé* Hoppin et."

NORTH AMERICA

Sheet II

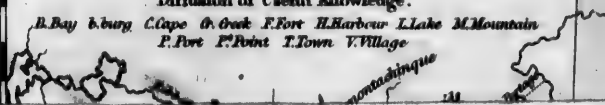
LOWER-CANADA AND NEW BRUNSWICK

with Part of

NEW-YORK, VERMONT AND MAINE.

*Published by the Society for the
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*B. Bay B. Burg. C. Cape G. G. G. F. Fort H. Harbour L. Lake M. Mountain
P. Port P. Point T. Town V. Village*



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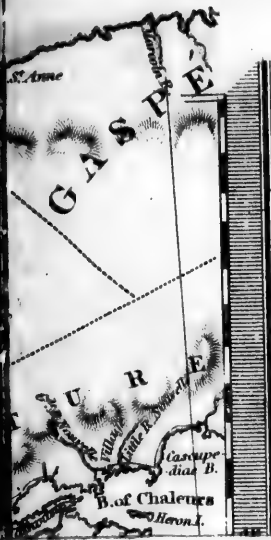
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B. Bay & Bay C. Cape & Coast F. River Harbour & Lake M. Mountain
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The Indians report this country
to be full of small Lakes and
Streams.





This Map

The Rivers wh.

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NORTH AMERICA

Sheet II

LOWER-CANADA AND NEW BRUNSWICK

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NORTH AMERICA

Sheet II

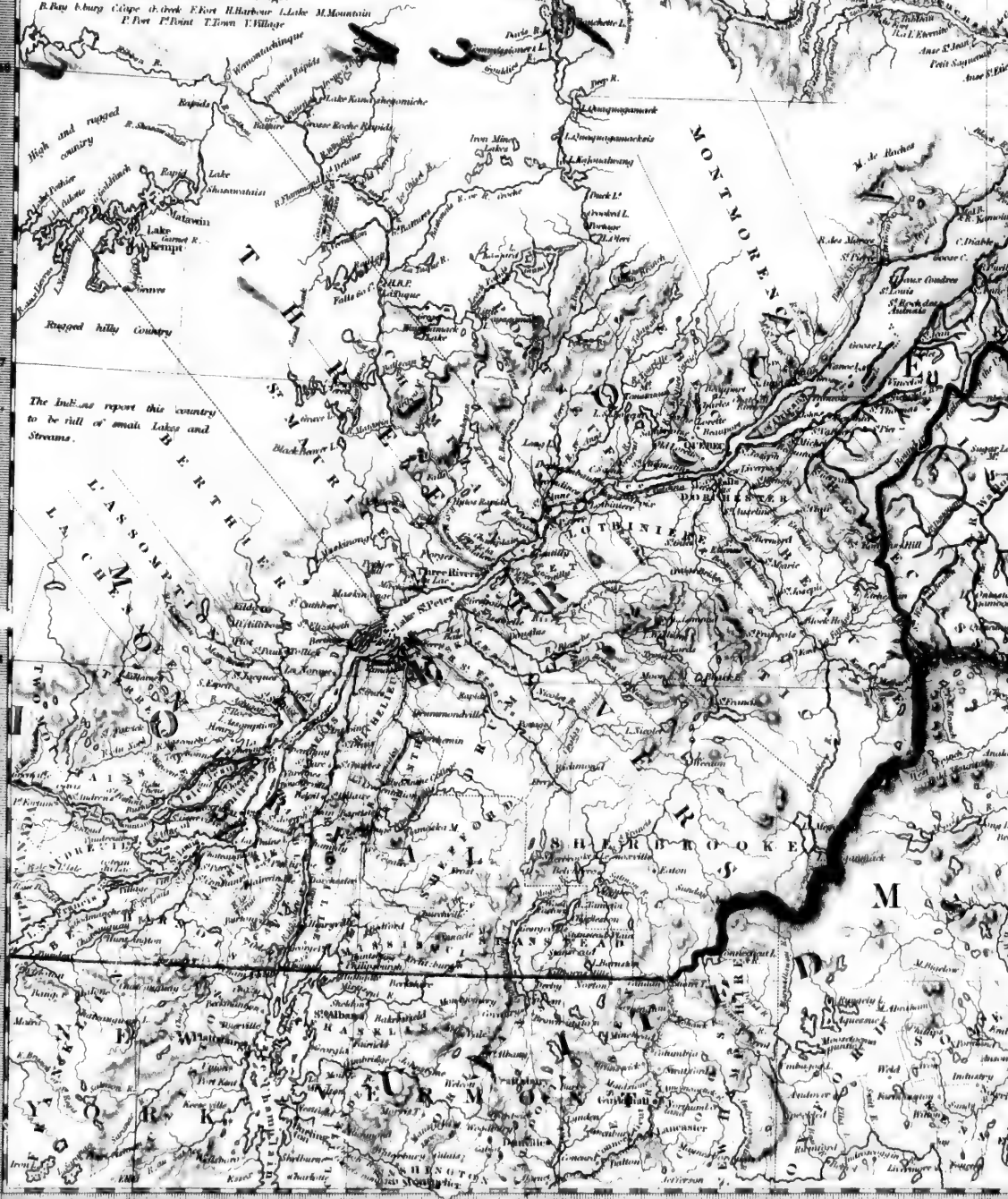
LOWER-CANADA AND NEW BRUNSWICK

with Part of

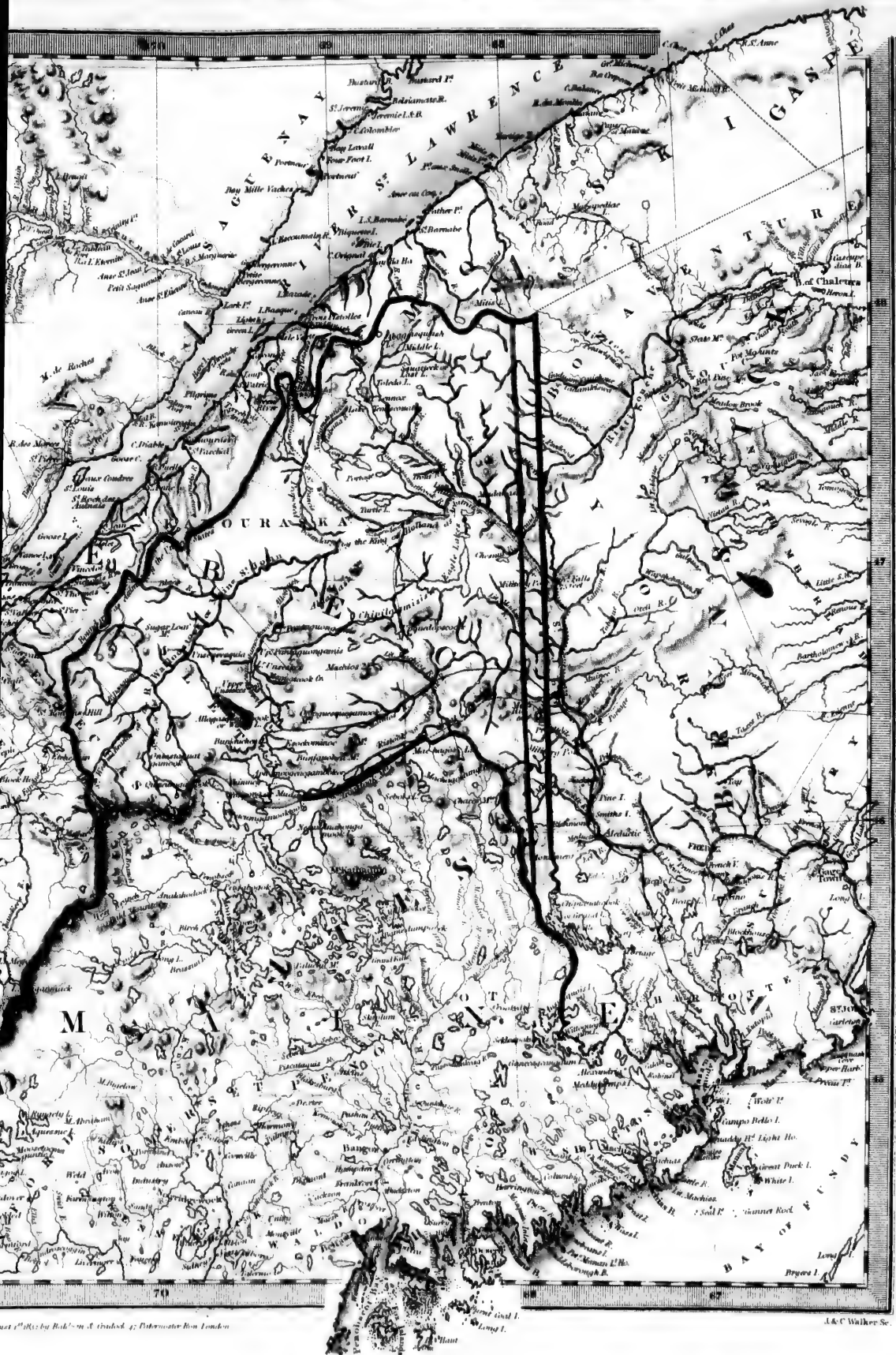
NEW YORK, VERMONT AND MAINE.

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Diffusion of Useful Knowledge.

R. Bay. L. Bay. Cape. R. River. F. Fort. H. Harbour. L. Lake. M. Mountain.
P. Port. P. Point. T. Town. V. Village.



The Indians report this country
to be full of small Lakes and
Streams.



U.S. Army
I GASPE

which the

parallelogram

the term

departure

at the

The value

is here

on the

50

EXPLANATION:

Line claimed by Great Britain

D° The United States

Line as proposed by the King of the Netherlands

49

Copied from a Plan drawn in Transfer Lithography by

J. L. Herbert, Horse Guards.

48

42

47

46

44

EXPLANATION:

- Line claimed by Great Britain
- Do The United States
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Copied from a Plan drawn in Transfer Lithography by
J.L. Herbert, Horse Guards

